

MONTANA
SUPPLEMENT
1939

Figure 1 displays 16 small diagrams, each representing a 4x4 grid of nucleotides (A, T, C, G) arranged in a specific spatial pattern. These patterns correspond to the 16 hexamers of DNA. The diagrams are labeled with their respective hexamer sequences: 1. AATTAA, 2. AATTA, 3. AATTA, 4. AATTA, 5. AATTA, 6. AATTA, 7. AATTA, 8. AATTA, 9. AATTA, 10. AATTA, 11. AATTA, 12. AATTA, 13. AATTA, 14. AATTA, 15. AATTA, 16. AATTA.

ABATDOM
WASSEL VAL TATE

9030
1935
A2

1939 SUPPLEMENT

to the

1935 Montana Revised Codes



CONTAINING ALL LAWS OF A GENERAL NATURE PASSED BY THE
1937 AND 1939 REGULAR SESSIONS

ANNOTATED WITH ALL THE MONTANA DECISIONS FROM WHERE
THE ANNOTATIONS LEFT OFF IN THE 1935 CODES
TO 92 PACIFIC SECOND



Compiled, Annotated, Edited and Indexed

BY

L. C. DARLINGTON



Courtright Publishing Company

DENVER, COLORADO

1939

1939
SUPPLEMENT
to the
1938 Montana
Revised Codes

Copyright, 1939

By

COURTRIGHT PUBLISHING CO.

DENVER, COLORADO

Courtright Publishing Company

PREFACE



The statutes herein are set forth exactly as they appear in the Session Laws, typographical errors being indicated by inserting the corrections in brackets. Editorial notes are resorted to in indicating cross-references to other pertinent or related sections.

Unless a statute expressly states that a prior statute is amended thereby, the later statute is not stated to be an amendment of the prior one, but both sections are reproduced, so that recourse to the Session Laws is not necessary in determining the question. In order to avoid any possible confusion, old chapter and section numbers are not used for new statutes, even in the case of repealed statutes or sections.

Each section indicates, at the end, the source thereof by session year, chapter, and section of the relevant Session Laws, and, by appropriate notations, traces the history of the section back to the Codes of 1935, as in the case of amendments.

A large number of statutes have at the end a section to the effect that laws in conflict therewith are repealed. As this section is repeated many times in almost the identical words it is not printed in full, but is indicated by the words "Section repeals conflicting laws." Similarly, many sections declaring that if any section is found to be unconstitutional the remainder of the statute shall stand, are indicated by the words "Section is a partial invalidity saving clause." If any sections contain unique wording, it is set out in full, as where there is an express repeal of certain specified laws.

As many statutes in this compilation are, in effect, emergency statutes, which go into effect on the Governor's approval, the date of enactment and of approval are given at the end of each section; otherwise they become effective on the first day of July following passage, under section 90 of the Codes of 1935. Obviously it is often of great importance to consider the exact day on which a statute went into effect, hence the value of the above notations, which avoid the necessity of reference to the Session Laws themselves. This somewhat novel feature we hope will meet with the approval of the Montana Judiciary and Bar.

As to the arrangement, this compilation interlocks with the Codes of 1935, with reference to amended sections, which retain the original code numbers. Where new statutes have been enacted on subjects not contained in the Codes of 1935, such new matter is located as near as possible, preferably following, germane matter in the 1935 Codes, numbered with the preceding chapter or section number with the addition of a letter of the alphabet, such as "Chapter 104A—Retirement System for Public School Teachers," following "Chapter 104—Teachers' Retirement Salary Fund."

The annotations cover all pertinent cases decided by the Supreme Court of Montana since the publication of the Codes of 1935 to the date of going to press of the present supplement.

Also all Federal cases, including those of the Supreme Court of the United States, that construe, apply, or pass on the validity of Montana statutes, have been examined and set forth in the annotations. This examination has likewise been extended to cases decided in the courts of last resort in sister states construing or applying statutes of Montana, which, while not of authority in this state, may be helpful to the Montana lawyer. All annotations indicate the year in which the cases were decided, the latest case being placed first in order.

Special laws, resolutions, and memorials are, of course, not included. The index was compiled by Mr. Henry C. Allen.

We trust that this compilation of the laws of Montana enacted since the publication of the Codes of 1935 will meet with the same favor as have compilations of the laws of other states which have been given to the legal profession by the Courtright Publishing Company.

L. C. DARLINGTON,

Member of the New York Bar and
formerly of the Corpus Juris staff.

Table of Contents

POLICAL CODE		Chapter	Sections
Chapter	Sections	Chapter	Sections
2. Sovereignty and territorial Jurisdiction of the State.....	23 to 25	34B. Rural Rehabilitation	349B.1 to 349B.15
7. Political Subdivision	45	35. State Water Conservation Board	349.5 to 349.38-1
9. The Legislative Assembly—Its Composition, Organization, Officers and Employees.....	62, 63	42. The Marshal of the Supreme Court	366 to 368
10. The Powers, Duties, and Compensation of Members, Officers and Employees of the Legislative Assembly....	76	43. The Clerk of the Supreme Court	372, 377
13. Initiative and Referendum.....	104	44. The Reporters of the Decisions of the Supreme Court	384
17. The Secretary of State.....	135, 142	51. Compensation of State Officers and Employees.....	442.1
18A. State Insurance Commission..	173.1a to 173.1c	53. Official Bonds	464, 466
19. State Insurance	173.2 to 173.25	55. The Fiscal Year—General Reports of Officers.....	520, 521
20. The State Treasurer.....	182.1 to 191.3	61. Registration of Electors.....	555 to 583.1
23. The State Examiner.....	214 to 219	62. Judges and Clerks of Election	587
25. The Board of Examiners — State Printing Contracts and Supplies	269 to 283.8	63A. Elections — Candidates — Officers — Resignation — Necessity	611.1 to 611.5
26. The State Purchasing Department	287	65. Party Nominations by Direct Vote—The Direct Primary	654, 662
27. The Budget System.....	303	67. Ballots—Preparation and Form	678 to 682
31. State Board of Charities and Reform	325 to 335	68. Conducting Elections — The Polls — Voting and Challenges	689.1, 700
32. Montana Relief Commission..	335.1 to 335.17	71. Election Returns	782 to 783
32A. Emergency Relief Employment	335.17-1 to 335.17-7	74. Non-Partisan Nomination and Election of Judges of Supreme Court and District Court	812.12
33. Old Age Pensions.....	335.18 to 335.45	79. The State Board of Education — Its Composition, Powers, and Duties.....	836a, 836b
34. State Bureau of Child and Animal Protection	336 to 347	83. Montana State University — State Forest and Conservation Experimental Station — Journalism Building	877.1 to 877.10
34A. Public Welfare	349A.1 to 349A-82	84. Montana School of Mines — State Bureau of Mines and Geology	884
Part I—State Department of Public Welfare.....	349A.1 to 349A.21	90A. State Correspondence School..	930.5 to 930.7
Part II—Provide Aid To the Unemployed	349A.22 to 349A.34	90B. Junior Colleges	930.8 to 930.19
Part III—Old Age Assistance	349A.35 to 349A.46h		
Part IV—Aid To Needy Children	349A.47 to 349A.55		
Part V—Aid To Needy Blind	349A.56 to 349A.68		
Part VI—Services for Crippled Children	349A.69 to 349A.73		
Part VII—Saving Clause.....	349A.74 to 349A.78		
Part VIII—Disposition of Funds	349A.79 to 349A.82		

TABLE OF CONTENTS

Chapter	Sections	Chapter	Sections
91. The Public Schools—Superintendent of Public Instruction	933	150. Montana Highway Patrol.....	1741.4 to 1741.11-1
92. County Superintendent of Schools	975	151. Speed and Traffic Regulations	1742.1 to 1754.6
93. School Trustees	1002 to 1015(24)	151A. Reckless Operation of Motor Vehicles — Financial Responsibility—Penalties	1754.11 to 1754.26
98. Grades and Courses of Study in Public Schools.....	1054	151B. Uniform Accident Reporting Act	1754.27 to 1754.45
99. School Day, Month and Year — Holidays — Pioneer and Arbor Day — Constitution Day	1070.1, 1070.2	Art. I—Words and Phrases Defined	1754.27, 1754.28
104. Teachers' Retirement Salary Fund	1113 to 1132	Art. II—Accidents	1754.29 to 1754.42
104A. Retirement System for Public School Teachers	1132.1 to 1132.19	Art. III—Effect of and Short Title of Act.....	1754.43 to 1754.45
110. Vehicles Used In Transportation of Pupils—Busses.....	1186.3	152. Registration of Motor Vehicles — Dealers — Non-residents — Protection of Titles of Motor Vehicles....	1755.4 to 1763.8b
112. Uniform System of Free Public Schools—State Support	1200.4 to 1200.4-2	156. State Highway Commission..	1797.1 to 1800.2
115. Bonds	1224.3 to 1224.17	159. Selection, Classification, Appraisal, and Exchange of Lands	1805.19a
117. High School Code — County High Schools—Junior High Schools — District High Schools — Joint School Systems	1262.14 to 1262.99g	160. Leasing of Agricultural Lands, Grazing Lands, and Town, City, and Other Lots.....	1805.21 to 1805.32
118. High School Budget System....	1263.5, 1263.8	162. Prospecting Permits and Mining Lease	1805.48 to 1805.51-18
119. High School Districts—Public Works	1301.1, 1301.2	164. Granting of Easements for Public Purposes	1805.58 to 1805.63-1
Jurisdiction of the State....	23 to 25	165. Sale of State Lands.....	1805.65-1 to 1805.89a
122. Militia—Composition—Enrollment — Officers — General Provisions	1377.1	167. State Lands and Investments — Miscellaneous Provisions	1805.122 to 1805.125
125. Militia—General Provisions—Montana Armory Board....	1400.1 to 1400.6	170. State Forests — Forester — Timber Sales and Disposal —Fire Wardens	1838
126. Insane Asylum	1431 to 1444i	172. State Board of Forestry.....	1840.1 to 1842
129. Montana School for the Deaf and Blind	1473.1 to 1473.4	173A. State Parks and Forests.....	1742.4 to 1842.8
129A. State Commission for the Blind	1473.5 to 1473.15	173B. State Park Commission.....	1871.1 to 1871.9
132. Tuberculosis Sanitarium	1525.1 to 1525.5	179. Carey Land Act Board—State Engineer	1956.2
134. State Library—Law Library — Historical Society of Montana	1556, 1569	182. Taxation — Definitions — Taxable Value	1996
134A. Science Commission of Montana	1575.3 to 1575.8	184. Classification of Property for Taxation—Basis for Taxation	1999, 2000.4
143. Establishing, Altering, and Vacating of Public Highways	1651.1 to 1651.4	185. Assessment of Property — Powers, Duties, and Liabilities of Assessor.....	2001.1 to 2002
144. Special Road Districts.....	1652 to 1675.2	189 Taxation of Mines.....	2090.1, 2091.1
		193. State Board of Equalization..	2122.9

TABLE OF CONTENTS

7

Chapter	Sections	Chapter	Sections
194. Assessment of Railroads by State Board of Equalization	2132 to 2173	250. Forest Fire Protection.....	2763 to 2778.4
195. Assessment of Certain Telegraph, Telephone, Electric Power Lines, and Other Properties Continuing Throughout More Than One County	2138 to 2146	254. Montana Beer Act.....	2815.11 to 2815.52
196. Levy of Taxes.....	2147.1 to 2155c	255. State Liquor Control Act of Montana	2815.63 to 2815.204
199. Collection of Property Taxes—Tax Sales—Sale of Tax Deed Lands—Redemption—Procuring Tax Deeds.....	2182 to 2235	255A. State Temperance Commission	2815.205 to 2815.213
200. Collection of Personal Property Taxes Not A Lien On Real Estate	2238 to 2252.7	256. Workmen's Compensation Act	2835 to 2953
204. Income Tax	2295.7	256A. Unemployment Compensation Law	3033.1 to 3033.24
205. Corporation License Tax.....	2296	Declaration of State Public Policy	3033.2, 3033.3
208. Coal Mines License Tax.....	2317, 2323	Benefit Eligibility Conditions..	3033.4
210. Electrical Energy Producers' License Tax	2343.1 to 2343.3	Disqualification for Benefits...	3033.5
212. Telephone License Tax.....	2355.10 to 2355.18	Claims for Benefits.....	3033.6
216. State Highway Debentures—Gasoline Dealers' and Distributors' License Tax — Distribution and Use of Proceeds of Tax—License—Refunds of Tax.....	2384a to 2396.4	Contributions	3033.7
221. Store License Tax.....	2420.1 to 2428.14	Period, Election and Termination of Employer's Coverage	3033.8
224. Hucksters' License	2429.10	Unemployment Compensation Fund	3033.9, 3033.9a
225. Itinerant Vendors' License....	2429.17, 2429.21	Unemployment Compensation Commission	3033.10
225A. Itinerant Merchants	2429.24 to 2429.38	Administration	3033.11
227. Public Contractors' License....	2433.5, 2433.6	Employment Service	3033.12, 3033.12a
228. Miscellaneous Licenses	2435.1 to 2439.8	Unemployment Compensation Administration Fund	3033.13
230. State, Local, and County Boards of Health.....	2484.1 to 2484.8	Collection of Contributions....	3033.14
232. Child Welfare Division of State Board of Health—Montana Orthopedic Commission	2511 to 2514	Protection of Rights and Benefits	3033.15
237A. Food Distributors Law of 1939	2599.1 to 2599.18	Penalties	3033.16
240. Regulation of Production and Sale of Dairy Products.....	2620.4 to 2634.15	Representation in Court.....	3033.17
241. Milk Control Board.....	2639.1 to 2640.26	Nonliability of State.....	3033.18
245. Electrical Construction—Regulation—Moving Structures When Interference With Poles or Wires Necessary....	2707.1 to 2711.4	Definitions	3033.19
248. Uniform Aeronautics Act.....	2736.7	Saving Clause	3033.20 to 3033.24
		256B. Public Works Emergency Relief	3033.25 to 3033.34
		263. Hours of Labor.....	3083.6, 3083.7
		264A. Security for Payment of Wages—Metal and Mine Workers	3094.1 to 3094.13
		270. Podiatry — Regulation of Practice	3154.1 to 3154.11
		271. Optometry — Regulation of Practice	3156 to 3167
		272. Pharmacy—Regulation of and Restriction on Sale of Opiates — Drug Dealers' License	3170 to 3202.13a
		272A. Uniform Drug Act — Narcotics	3202.14 to 3202.43
		275. Cosmetology and Hairdressing —Regulation of Practice....	3228.1 to 3228.16
		276. Barbers and Barber Shops.....	3228.19 to 3228.31

TABLE OF CONTENTS

Chapter	Sections	Chapter	Sections
278. Public Accounting — Regulation of Practice.....	3241.1	308. Fish and Game Laws — Licenses — Protection and Propagation of Fish and Game	3685 to 3778.10
279A. Photography — Regulation of Practice	3252.1 to 3252.15	313. Regulation of Public Utilities —Public Service Commission	3906
281. The Livestock Sanitary Board and State University Surgeon — Quarantine, Inspection and Destruction of Diseased Stock	3268.1, 3277	314. Petroleum Products—Supervision and Regulation of Manufacture and Distribution	3913.1 to 3913.24
284. Butchers and Meat Peddlers—Regulation	3298.19	316. Regulation of Stock Brokers and Investment Companies (Blue Sky Laws).....	4028
287. Inspection of Horses and Cattle before Removal from State	3321 to 3323	319. Regulation of Title Abstractors	4139.12
288. Inspection of Livestock before Removal from One County to Another	3324 to 3327	327. Regulation of Commercial Fertilizer	4208.2 to 4208.10
289A. Livestock Markets—Establishment, Regulation, Supervision, Licensing, and bonding	3332.1 to 3332.14	330. Standard Weights and Measures — State Sealers of Weights and Measures.....	4230 to 4264.2
291. Hides of Slaughtered Cattle — Regulations — Hide Dealers' License	3350.1 to 3350.15	331. Regulation of Sale of Apples..	4265.1
298. Bounties for Killing Wild Animals—Killing Dogs Injuring or Destroying Livestock	3417.17	341A. Abandonment of Counties — Abandoned Territory—Attachment—Vote	4426.1 to 4426.23
300. Sampling and Assaying Ore....	3444.1	344. County Commissioners — Organization, Meetings, and Compensation	4464
301. Payment for Consignment of Ore — Purchasers from Leased Mines	3446	345. General Powers of Boards of County Commissioners	4465.3a to 4466
302. Regulation of Coal-Mining Industry	3486 to 3504	346. Special Powers and Duties of County Commissioners	4482 to 4520.2
305. Conservation of Oil and Natural Gas—Oil Conservation Board	3554.14 to 3554.15	347. Care of the County Poor.....	4536
306. The Department of Agriculture, Labor, and Industry —Regulation of Agriculture, Horticulture, Apiculture, Poultry Husbandry, Dairying, Grain Grading and Inspection, Statistical Data and the State Fair..	3564 to 3649.1n	350A. Veterans' Memorial Fund Commission	4562.4 to 4562.8
306A. Montana Agricultural Conservation Act	3649.4 to 3649.17	351A. Joint County or Regional Libraries	4573.1 to 4573.6
306B. State Soil Conservation Districts Law	3649.18 to 3649.35	353. Rural Improvement Districts..	4585
307. Fish and Game Laws—Commission and Warden.....	3676	353A. Montana Rural Rehabilitation Corporation	4603.1 to 4603.5
		355. County Budget System.....	4613.4
		356. County Finances, Bonds, and Warrants	4622.1 to 4630.30
		360. County Officers — Enumeration — Qualifications — Bonds—General Provisions	4728
		361. Consolidation of County Offices	4749.7
		362. County Treasurer	4767.4

TABLE OF CONTENTS

9

Chapter	Sections	Chapter	Sections
372. Salaries and Fees of County Officers and Deputies, Jurors and Witnesses.....	4880 to 4922	420A. Public Airports—Protection and Safety	5668.40-1 to 5668.40-10
380. Plats of Cities and Towns and Additions Thereto.....	4993	421A. Intergovernmental Cooperation	5668.45 to 5668.55
381. Officers and Elections.....	5011, 5022	CIVIL CODE	
382. Executive Powers — Mayor — Clerk — Treasurer — Chief of Police—Attorney..	5035.1	3A. Radio Broadcasting—Liability for Defamation	5694.1 to 5694.3
383. Legislative Powers — Powers of City Councils — Ordinances—Initiative and Referendum	5039.5-1 to 5039.74	6. Dissolution of Marriage—Divorce	5736, 5736.1
384. Municipal Contracts and Franchises	5070	13. Changes In Corporate Organization and Management....	5918 to 5928.1
385. Presentation and Payments of Claims—City Warrants.....	5080	19. Powers and Duties of Corporations	5994.1
390. Police Department	5098 to 5108.16	22. Dissolution of Corporations....	6011, 6011.1
391. Fire Department—Firemen's Disability Fund	5109 to 5138.2	24. Banks and Banking.....	6014.23 to 6018.2
393. Parks and Playgrounds — Board of Park Commissioners	5161 to 5166.5	24A. Federal Deposit Insurance Corporation—Banking Institutions Authorized to Deal With	6018.3 to 6018.8
397. Taxation and Licenses.....	5194 to 5221	27. Insurance Companies—General Regulations	6127.1 to 6127.5
398. Special Improvement Districts	5229 to 5249	28. Stock and Mutual Insurance Companies Other Than Life	6164
399. Municipal Bonds and Indebtedness	5278.1 to 5278.33	29. Mutual Hail Insurance and Mutual Fire, Lightning, and Other Casualty Insurance of Farm Property and Stock	6175a, 6175b
399A. The Revenue Bond Refinancing Act of 1937.....	5288.1 to 5288.17	30. Mutual Rural Insurance Companies	6205.1
399B. Municipal Revenue Bond Act of 1930—Public Service.....	5288.18 to 5288.31	33. Life Insurance Companies.....	6269 to 6339
404. Housing Authorities Law — Cooperation of Cities and Towns — Investments in Securities of Home Owners' Loan Corporation and Institutions Organized Under National Housing Act	5309.35	37. Building and Loan Associations	6355.13 to 6374.7
408. Commission-Manager Plan of Government	5486	38A. Rural Electric Cooperative Act	6396.1 to 6396.31
411. The Revision of the Codes.....	5531.11 to 5531.13	42. Incorporation of Religious, Social, and Benevolent Corporation	6453
412. The Publication of the Codes..	5553.8	44. Incorporation of Cemetery Associations	6479 to 6502
7 R. C. M. 1921. War Defense Bonds	5624 to 5637	49. General Regulations of Business of Railroads.....	6600, 6601
413. Employment of Soldiers and Sailors	5653	54. Foreign Corporations	6651
415A. World War Orphans' Education Fund	5668a-1 to 5668a-3	57. Conditions and Limitations of Ownership	6711, 6713
416A. Validity of Bonds.....	5668.13a to 5668.13b	65A. Protection of Copyrights.....	6815.1 to 6815.10
		72. Recording Transfers—Release of Oil, Gas, and Mineral Leases	6893
		73. Acknowledgment and Proof of Instruments	6910, 6915

TABLE OF CONTENTS

Chapter	Sections	Chapter	Sections
76. Homesteads	6968	63. Quieting Title to Personal Property — Quieting Title to Real Property and Other Provisions Relating to Actions Concerning Real Estate	9479.1 to 9488.1
80. Succession	7090.1 to 7090.5	68. Manner of Commencing Action in Justice Courts....	9631 to 9637
81. Water Rights—Appropriation	7097.1 to 7135.9	71. Judgment By Default.....	9664
82. Water Commissioners — De- termination of Joint Rights	7136	74. Judgments (Other Than De- fault) In Justice Courts....	9680
83A. Water Users' Corporations and Associations Formed Under Montana Law.....	7165.1, 7165.2	78. General Provisions Relating to Justice Courts.....	9716
86. Irrigation Districts— Extension	7189.1	103. Eminent Domain	9939
88. Irrigation Districts — Rights- of-Way — Use and Appor- tionment of Water.....	7196.1	107. Public Administrator	10000
93. Irrigation Districts — Appeals and Miscellaneous Pro- visions	7264.14 to 7264.20	111. Probate of Foreign Wills.....	10039
94. Drainage Districts	7364.7 to 7364.29	115. Persons to Whom and Order In Which Letters of Ad- ministration are Granted....	10068
94A. Grass Conservation Act..7364.29-1 to 7364.29-31		118. Oaths and Bonds of Executors and Administrators	10088 to 10106.3
112A. Fair Trade Act—Resale of Trade-Marked or Branded Articles	7590.1 to 7590.9	128. Claims Against Estate.....	10178
182. Mortgages In General.....	8261.1	129. Sales of Property of Estate In General — Borrowing Money—Sales of Personal Property	10204
224. Compensatory Relief—General Provisions	8706.1	134. Conveyance of Real Estate By Executors and Admin- istrators	10269, 10279.9
CODE OF CIVIL PROCEDURE			
13. Different Kinds of Juries Defined	8883 to 8889	144. Miscellaneous — Orders — Process — Minutes — Records — Trials and Ap- peals	10376
14. Qualifications and Exemptions of Jurors	8890 to 8895	146. Guardians of Minors.....	10408.1
16. Drawing and Summoning Jurors for Courts of Record	8903, 8904	147. Guardians of Insane and Incompetent Persons	10416, 10416.1
31. Manner or Commencing Civil Actions—Service of Sum- mons	9111	153. Financial Aid of Dependent Children (Mothers' Pension Act)	10480 to 10487
32. Pleadings In General.....	9127	156A. Judicial Notice of Foreign Laws — Other States and Countries	10532.1 to 10532.7
40. Variances — Amendments — Mistakes In Pleadings.....	9192	158A. Uniform Official Reports as Evidence Act	10535 to 10576.5
44. Attachment	9263.1, 9262.2	159A. Uniform Business Records as Evidence Act	10598.1 to 10598.4
49. Judgment By Default.....	9322	PENAL CODE	
50. Issues—The Mode of Trial and Postponements	9327	14A. Unfair Practices Act.....	10915.1 to 10915.16
51. Trial By Jury—Formation of the Jury	9334 to 9341		
59. The Execution	9428.1 to 9444.11		

TABLE OF CONTENTS

11

Chapter	Sections	Chapter	Sections
14B. Financing Agreements In Sale of Motor Vehicles.....	10915.20 to 10915.25	86. The Judgment—Suspension of Sentence and Probation....	12078, 12082.1
15. Other Miscellaneous Offenses Against Public Justice.....	10921	96A. Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases	12186.1 to 12186.6
32. Gambling	11159 to 11159.2	104A. Uniform Act for Out-of-State Parolee Supervision	12266.1, 12266.2
63. Removal of Officers Otherwise Than By Impeachment.....	11688	106. Proceedings Against Delinquent Children and Juvenile De- linquent Persons	12288
64. Local Jurisdiction of Public Offences	11712	111A. Uniform Criminal Extrad- ition Act	12428.1 to 12428.30
67. The Warrant of Arrest— Proceedings on Execution of the Warrant.....	11737	119. State Vocational School for Girls	12543 to 12543.2
68A. Uniform Act on Close Pur- suit	11772.1 to 11772.6		

Comparative Tables of Sections of Session Laws and 1939 Supplement

These cross-reference tables show where each section of the Session Laws appear in this Supplement, since the 1935 Codes. Sections of the Session Laws which have been amended by a later enactment are omitted, as only the acts appearing herein are shown in the tables.

JOINT RESOLUTION — 1935

Joint Resolution No. 8 p. 537	'39 Supp. 4603.1, 4603.2
-------------------------------------	--------------------------------

1935 SESSION LAWS

Ch.	Sec.	'39 Supp.
133	1	877.6
133	2	877.7
133	3	877.8
133	4	877.9
133	5	877.10

1937 SESSION LAWS

Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.
1	1	5531.11	15	1	5138.1	27	6	349A.46f	36	1	1805.122	42	4	7590.4
1	2	5531.12	15	2	5110.1	27	7	349A.46g	36	2	1805.123	42	5	7590.5
1	3	5531.13	15	3	5110.2	27	8	349A.46h	36	3	1805.124	42	6	7590.6
2	1	689.1	16	1	1301.1	28	1	2295.7	36	4	1805.125	42	7	7590.7
3	1	2815.77	16	2	1301.2	29	1	2296	37	1	3252.1	42	8	7590.8
4	1	5109	17	1	3444.1	30	1	2815.63	37	2	3252.2	42	10	7590.9
4	4	5109.1	17	2	3446	30	2	2815.65	37	3	3252.3	43	1	1473.1
5	1	273.1	18	1	104	30	3	2815.66	37	4	3252.4	43	2	1473.2
5	2	273.2	19	1	10416	30	4	2815.69	37	5	3252.5	43	3	1473.3
5	3	273.3	19	2	10416.1	30	5	2815.75	37	6	3252.6	43	4	1473.4
5	4	273.4	20	1	2252.3	30	6	2815.11	37	7	3252.7	44	1	63
6	1	5668.13f	20	2	2252.4	30	7	2815.12	37	8	3252.8	45	1	4466
6	2	5668.13g	20	3	2252.5	30	8	2815.106a	37	9	3252.9	46	1	135
6	3	5668.13h	20	4	2252.6	30	9	2815.106b	37	10	3252.10	46	2	303
7	1	1224.14	20	6	2252.7	30	10	2815.52	37	11	3252.11	46	3	384
8	1	9127	21	1	11712	31	1	6651	37	12	3252.12	46	4	521
8	2	9192	22	1	9939	32	1	5918	37	13	3252.13	47	1	5221
9	1	4922	23	1	5249	32	2	5919.1	37	14	3252.14	48	1	5194
10	1	1760.11	24	1	5309.35	32	3	5923.1	37	15	3252.15	49	1	2090.1
10	2	1760.12	25	1	6018.1	32	4	5923.2	38	1	1200.4	50	1	62
10	3	1760.13	25	2	6018.2	32	5	5928.1	39	1	7097.1	50	2	76
10	4	1760.14	26	1	1763.8a	33	1	520	40	1	269a	51	1	5245
10	5	1760.15	26	2	1763.8b	34	1	9664	40	2	269b	52	1	3332.1
10	6	1760.16	27	1	349A.46a	34	2	9680	40	3	269c	52	2	3332.2
11	1	1200.4-1	27	2	349A.46b	34	3	9632	40	4	269d	52	3	3332.3
12	2	5278.33	27	3	349A.46c	34	4	9633	42	1	7590.1	52	4	3332.4
13	1	7189.1	27	4	349A.46d	34	5	9637	42	2	7590.2	52	5	3332.5
14	1	1805.32	27	5	349A.46e	35	1	5039.61	42	3	7590.3	52	6	3332.6

1937 SESSION LAWS—Continued

Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.
52	7	3332.7	80	3	10915.3	82	Part II,			§ V	349A.60	84	19	2815.182
52	8	3332.8	80	4	10915.4		§ V	349A.26	82	Part V,		84	20	2815.183
52	9	3332.9	80	5	10915.5	82	Part II,			§ VI	349A.61	84	21	2815.184
52	10	3332.10	80	5a	10915.5a		§ VI	349A.27	82	Part V,		84	22	2815.185
52	11	3332.11	80	6	10915.6	82	Part II,			§ VII	349A.62	84	23	2815.186
52	12	3332.12	80	7	10915.7		§ VII	349A.28	82	Part V,		84	24	2815.187
52	13	3332.13	80	8	10915.8	82	Part II,			§ VIII	349A.63	84	25	2815.188
52	14	3332.14	80	9	10915.9		§ VIII	349A.29	82	Part V,		84	26	2815.189
53	1	2891	80	10	10915.10	82	Part II,			§ IX	349A.64	84	27	2815.190
54	1	2231	80	11	10915.11		§ IX	349A.30	82	Part V,		84	28	2815.191
55	1	191.2	80	12	10915.12	82	Part II,			§ X	349A.65	84	29	2815.192
55	1	191.3	80		10915.12a		§ X	349A.31	82	Part V,		84	30	2815.193
56	1	3906	80		10915.12b	82	Part II,			§ XI	349A.66	84	31	2815.194
57	1	1224.6	80		10915.12c		§ XI	349A.32	82	Part V,		84	32	2815.195
58	1	884	80	13	10915.13	82	Part II,			§ XII	349A.67	84	33	2815.196
59	1	10598.1	80	14	10915.14		§ XII	349A.33	82	Part V,		84	34	2815.197
59	2	10598.2	80	15	10915.15	82	Part II,			§ XIII	349A.68	84	35	2815.198
59	3	10598.3	80	16	10915.16		§ XIII	349A.34	82	Part VI,		84	36	2815.199
59	4	10598.4	81	1	182.1	82	Part III,			§ I	349A.69	84	37	2815.200
60	1	10532.1	82	Part I,			§ I	349A.35	82	Part VI,		84	38	2815.201
60	2	10532.2		§ I	349A.1	82	Part III,			§ II	349A.70	84	39	2815.202
60	3	10532.3	82	Part I,			§ II	349A.36	82	Part VI,		84	40	2815.203
60	4	10532.4		§ II	349A.2	82	Part III,			§ III	349A.71	84	41	2815.204
60	5	10532.5	82	Part I,			§ III	349A.37	82	Part VI,		85	1	335.17-1
60	6	10532.6		§ III	349A.3	82	Part III,			§ IV	349A.72	85	2	335.17-2
60	7	10532.7	82	Part I,			§ IV	349A.38	82	Part VI,		85	3	335.17-3
61	1	587		§ IV	349A.4	82	Part III,			§ V	349A.73	85	4	335.17-4
62	1	1741.9	82	Part I,			§ V	349A.39	82	Part VII,		85	5	335.17-5
63	1	2215.9		§ V	349A.5	82	Part III,			§ I	349A.74	85	6	335.17-6
64	1	1956.2	82	Part I,			§ VI	349A.40	82	Part VII,		85	7	335.17-7
65	1	5736		§ VI	349A.6	82	Part III,			§ II	349A.75	86	1	5668.45
65	2	5736.1	82	Part I,			§ VII	349A.41	82	Part VII,		86	2	5668.46
66	1	5653		§ VII	349A.7	82	Part III,			§ III	349A.76	86	3	5668.47
67	1	2952	82	Part I,			§ VIII	349A.42	82	Part VII,		86	4	5668.48
68	1	2620.4		§ VIII	349A.8	82	Part III,			§ IV	349A.77	86	5	5668.49
68	2	2620.20	82	Part I,			§ IX	349A.43	82	Part VII,		86	6	5668.50
68	3	2620.34		§ IX	349A.9	82	Part III,			§ V	349A.78	86	7	5668.51
68	4	2620.49	82	Part I,			§ X	349A.44	82	Part VIII,		86	8	5668.52
68	5	2620.70		§ X	349A.10	82	Part III,			§ I	349A.79	86	9	5668.53
68	6	2620.71	82	Part I,			§ XI	349A.45	82	Part VIII,		86	10	5668.54
68	7	2620.72		§ XI	349A.11	82	Part III,			§ II	349A.80	86	11	5668.55
69	1	7196.1	82	Part I,			§ XII	349A.46	82	Part VIII,		87	1	1132.1
70	1	2233.1		§ XII	349A.12	82	Part IV,			§ III	349A.81	87	2	1132.2
70	2	2233.2	82	Part I,			§ I	349A.47	82	Part VIII,		87	3	1132.3
70	3	2233.3		§ XIII	349A.13	82	Part IV,			§ V	349A.82	87	4	1132.4
70	4	2233.4	82	Part I,			§ II	349A.48	82	Part VII,		87	5	1132.5
70	6	2233.5		§ XIV	349A.14	82	Part IV,			§ II	10480-	87	6	1132.6
71	1	3633.4	82	Part I,			§ III	349A.49			10487	87	7	1132.7
72	1	1759		§ XV	349A.15	82	Part IV,		83	1	2343.1	87	8	1132.8
72	2	1759.4	82	Part I,			§ IV	349A.50	83	1	2343.3	87	9	1132.9
72	3	1759.2		§ XVI	349A.16	82	Part IV,		83	2	2343.3	87	10	1132.10
72	4	1759.3	82	Part I,			§ V	349A.51	84	1	2815.164	87	11	1132.11
72	5	1758		§ XVII	349A.17	82	Part IV,		84	2	2815.165	87	12	1132.12
72	6	1758.2	82	Part I,			§ VI	349A.52	84	3	2815.166	87	13	1132.13
72	7	1758.3		§ XVIII	349A.18	82	Part IV,		84	4	2815.167	87	14	1132.14
72	8	1758.4	82	Part I,			§ VII	349A.53	84	5	2815.168	87	15	1132.15
72	9	2002		§ XIX	349A.19	82	Part IV,		84	6	2815.169	87	16	1132.16
72	10	1755.4,	82	Part I,			§ VIII	349A.54	84	7	2815.170	87	18	1132.17
		1755.5		§ XX	349A.20	82	Part IV,		84	8	2815.171	87	19	1132.18
74	1	3778.9	82	Part I,			§ IX	349A.55	84	9	2815.172	87	20	1132.19
74	2	3778.10		§ XXI	349A.21	82	Part V,		84	10	2815.173	87	21	1113-1132
75	1	4520.2	82	Part II,			§ I	349A.56	84	11	2815.174	88	1	6453
76	1	10408.1		§ I	349A.22	82	Part V,		84	12	2815.175	89	1	2815.13
77	1	10204	82	Part II,			§ II	349A.57	84	13	2815.176	91	1	2439.1
78	1	5108.2		§ II	349A.23	82	Part V,		84	14	2815.177	91	2	2439.2
78	2	5108.7	82	Part II,			§ III	349A.58	84	15	2815.178	91	3	2439.3
79	1	5553.8		§ III	349A.24	82	Part V,		84	16	2815.179	91	4	2439.4
80	1	10915.1	82	Part II,			§ IV	349A.59	84	17	2815.180	91	5	2439.5
80	2	10915.2		§ IV	349A.25	82	Part V,		84	18	2815.181	91	6	2439.6

1937 SESSION LAWS—Continued

Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.
91	7	2439.7	115	7	3033.31	129	3	1754.13	140	1	1015(23)	160	1	1377.1
91	8	2439.8	115	8	3033.32	129	4	1754.14	141	1	877.1	161	1	464
92	1	2296	115	9	3033.33	129	5	1754.15	141	2	877.2	162	1	2835
94	1	2355.10	115	10	3033.34	129	6	1754.16	141	3	877.3	162	2	2945
94	2	2355.11	116	1	611.1	129	7	1754.17	141	4	877.4	162	3	2953
94	3	2355.12	116	2	611.2	129	8	1754.18	141	5	877.5	163	1	4536
94	4	2355.13	116	3	611.3	129	9	1754.19	142	1	5668a-1	164	1	215
94	5	2355.14	116	4	611.4	129	10	1754.20	142	2	5668a-2	165	1	1015
94	6	2355.15	116	5	611.5	129	11	1754.21	142	3	5668a-3	166	1	6968
94	7	2355.16	117	1	12288	129	12	1754.22	143	1	10576.1	167	1	10088
94	8	2355.17	118	1	4482.1	129	13	1754.23	143	2	10576.2	168	1	1805.19a
94	9	2355.18	118	2	4482.2	129	14	1754.24	143	3	10576.3	169	1	6915
95	1	6127.1	118	3	4482.3	129	15	1754.25	143	4	10576.4	170	1	6893
95	2	6127.2	118	4	4482.4	129	16	1754.26	143	5	10576.5	171	1	6910
95	3	6127.3	118	5	4482.5	130	1	1999	144	1	10915.20	172	1	570.1
95	4	6127.4	118	6	4482.6	131	1	6014.23	144	2	10915.21	172	2	570
95	5	6127.5	118	7	4482.7	132	1	2214.2	144	3	10915.22	172	3	561
96	1	2396.4	118	8	4482.8	133	1	3324	144	4	10915.23	172	4	555
97	1	2153	118	9	4482.9	133	2	3326.1	144	5	10915.24	172	5	557
98	1	4613.4	118	10	4482.10	133	3	3327	144	6	10915.25	172	6	583.1
100	1	2215.2	118	11	4482.11	134	1	3649.4	145	1	3676	173	1	10269
101	1	2207	118	12	4482.12	134	2	3649.5	146	1	3486	174	1	2711.1
102	1	2396.3	118	13	4482.13	134	3	3649.6	146	2	3501	174	2	2711.4
103	1	9443	118	14	4482.14	134	4	3649.7	146	3	3504	175	1	9111
103	2	9444	118	15	4482.15	134	5	3649.8	147	1	562	176	1	3202.14
104	1	4767.4	118	16	4482.16	134	6	3649.9	147	2	562.1	176	2	3202.15
104	2	4767.5	118	17	4482.17	134	7	3649.10	148	1	1805.51-1	176	3	3202.16
105	1	4426.1	118	18	4482.18	134	8	3649.11	148	2	1805.51-2	176	4	3202.17
105	2	4426.2	118	19	4482.19	134	9	3649.12	148	3	1805.51-3	176	5	3202.18
105	3	4426.3	118	20	4482.20	134	10	3649.13	148	4	1805.51-4	176	6	3202.19
105	4	4426.4	118	21	4482.21	134	11	3649.14	148	5	1805.51-5	176	7	3202.20
105	5	4426.5	118	22	4482.22	134	12	3649.15	148	6	1805.51-6	176	8	3202.21
105	6	4426.6	118	23	4482.23	134	13	3649.16	148	7	1805.51-7	176	9	3202.22
105	7	4426.7	118	24	4482	134	16	3649.17	148	8	1805.51-8	176	10	3202.23
105	8	4426.8	118	24	4482.24	135	1	4630.1	148	9	1805.51-9	176	11	3202.24
105	9	4426.9	119	1	2208.1a	135	2	4630.3	148	10	1805.51-10	176	12	3202.25
105	10	4426.10	119	2	2208.1b	135	3	4630.4	148	11	1805.51-11	176	13	3202.26
105	11	4426.11	119	3	2208.1c	135	4	4630.6	148	12	1805.51-12	176	14	3202.27
105	12	4426.12	119	4	2208.1d	135	5	4630.6-1	148	13	1805.51-13	176	15	3202.28
105	13	4426.13	120	1	4028	136	1	3321	148	14	1805.51-14	176	16	3202.29
105	14	4426.14	121	1	5288.1	136	2	3322	148	15	1805.51-15	176	17	3202.30
105	15	4426.15	121	2	5288.2	136	3	3322.1	148	16	1805.51-16	176	18	3202.31
105	16	4426.16	121	3	5288.3	136	4	3323	148	17	1805.51-17	176	19	3202.32
105	17	4426.17	121	4	5288.4	137	1	3033.1	148	18	1805.48-	176	20	3202.33
105	18	4426.18	121	5	5288.5	137	2	3033.2			1805.51	176	21	3202.34
105	19	4426.19	121	6	5288.6	137	3	3033.3	148	18	1805.51-18	176	22	3202.35
105	20	4426.20	121	7	5288.7	137	4	3033.4	149	1	933	176	23	3202.36
105	21	4426.21	121	8	5288.8	137	5	3033.5	150	1	10089	176	24	3202.37
105	22	4426.22	121	9	5288.9	137	6	3033.6	150	2	10096	176	25	3202.38
105	23	4426.23	121	10	5288.10	137	7	3033.7	151	1	8903	176	26	3202.39
106	1	3241.1	121	11	5288.11	137	8	3033.8	151	2	8904	176	27	3202.40
107	1	4749.7	121	12	5288.12	137	9	3033.9	151	3	9334	176	28	3202.41
108	1	5278.1	121	13	5288.13	137	10	3033.10	151	4	9335	176	29	3189-3193
108	2	5278.6	121	14	5288.14	137	11	3033.11	151	5	9341	176	29	3199-3202
109	1	2429.17	121	15	5288.15	137	12	3033.12	152	1	4465.27	176	29	3202.3-
109	2	2429.21	121	16	5288.16	137	13	3033.13	152	2	4465.27-1			3202.6
110	1	1262.34-1	121	17	5288.17	137	14	3033.14	153	1	11159	176	29	3202.42
111	1	700	122	1	5080	137	15	3033.15	153	2	11159.1	176	30	3202.43
112	1	782	123	1	3554.14	137	16	3033.16	153	3	11159.2	177	1	3277
112	2	782.1	123	2	3554.15	137	17	3033.17	154	1	1759.5	177	2	3268.1
112	2	783	124	1	2429.10	137	18	3033.18	155	1	349.29-1	178	1	10376
113	1	2433.6	125	1	2147.1	137	19	3033.19	155	2	349.29-2	179	1	10106.1
114	1	349.38-1	125	2	2147.2	137	20	3033.20	156	1	9716	179	2	10106.2
115	1	3033.25	126	1	8261.1	137	21	3033.21	158	1	1054	179	3	10106.3
115	2	3033.26	127	1	9428.1	137	22	3033.22	159	1	1842.4	180	1	5039.74
115	3	3033.27	128	1	9262.1	137	23	3033.23	159	2	1842.5	181	1	654
115	4	3033.28	128	2	9262.2	137	24	3033.24	159	3	1842.6	182	1	1741.4
115	5	3033.29	129	1	1754.11	138	1	1760	159	4	1842.7	182	2	1741.5
115	6	3033.30	129	2	1754.12	139	1	4916	159	5	1842.8	182	3	1741.5-1

1937 SESSION LAWS—Continued

Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.
182	4	1741.6	188	3	12186.3	190	17	12428.17	195	3	4603.5	201	4	2815.208
182	5	1741.7	188	4	12186.4	190	18	12428.18	196	1	12543	201	5	2815.209
182	6	1741.8	188	5	12186.5	190	19	12428.19	196	2	12543.1	201	6	2815.210
182	7	1741.9	188	6	12186.6	190	20	12428.20	196	3	12543.2	201	7	2815.211
182	8	1741.10	189	1	12266.1	190	21	12428.21	197	1	6018.3	201	8	2815.212
182	9	1741.11	189	4	12266.2	190	22	12428.22	197	2	6018.4	201	9	2815.213
182	11	1741.11-1	190	1	12428.1	190	23	12428.23	197	3	6018.5	202	1	3554.14a
183	1	3228.19	190	2	12428.2	190	24	12428.24	197	4	6018.6	203	1	678
183	2	3228.20	190	3	12428.3	190	25	12428.25	197	5	6018.7	204	1	3649.1f
183	3	3228.21	190	4	12428.4	190	25a	12428.25a	197	6	6018.8	204	2	3649.1g
184	1	12078	190	5	12428.5	190	25b	12428.25b	198	1	6011	204	3	3649.1h
185	1	7165.1	190	6	12428.6	190	26	12428.26	198	2	6011.1	204	4	3649.1i
185	2	7165.2	190	7	12428.7	190	27	12428.27	199	13	2420.1-	204	5	3649.1j
186	1	1008	190	8	12428.8	190	30	12428.30			2420.11	204	6	3649.1k
187	1	11772.1	190	9	12428.9	191	1	7264.19	200	1	5138.2	204	7	3649.1m
187	2	11772.2	190	10	12428.10	191	2	7264.20	200	2	5110.3	204	8	3608.1
187	3	11772.3	190	11	12428.11	192	1	3594	200	3	5110.4	204	8	3649.1n
187	4	11772.4	190	12	12428.12	192	2	3599	200		5116.2	204	8	4230
187	5	11772.5	190	13	12428.13	194	1	1070.1	200		5116.3			
187	7	11772.6	190	14	12428.14	194	2	1070.2	201	1	2815.205			
188	1	12186.1	190	15	12428.15	195	1	4603.3	201	2	2815.206			
188	2	12186.2	190	16	12428.16	195	2	4603.4	201	3	2815.207			

1939 SESSION LAWS

Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.
1	1	1805.65-1	17	4	2143	38	2	367	48	4	1871.4	59	1	349B.6
2	1	2343.1a	17	5	2141	38	3	368	48	5	1871.5	59	2	349B.7
3	1	8903	17	6	2144	38	4	377	48	6	1871.6	59	3	349B.8
3	2	8904	17	7	2146	38	5	1569	48	7	1871.7	59	4	349B.9
3	3	9334	17	8	2140	39	1	3094.1	48	8	1871.8	59	5	349B.10
3	4	9335	18	1	5070	39	2	3094.2	48	9	1871.9	59	6	349B.11
3	5	9341	19	1	5011	39	3	3094.3	49	1	2599.1	59	7	349B.12
4	1	2435.1-	20	1	975	39	4	3094.4	49	2	2599.2	59	8	349B.13
		2435.4	21	1	5039.5-1	39	5	3094.5	49	3	2599.3	59	9	349B.14
5	1	4993	21	2	5039.5-2	39	6	3094.6	49	4	2599.4	59	10	349B.15
6	1	2238	22	1	6339	39	7	3094.7	49	5	2599.5	60	1	5994.1
7	1	2295.7	23	1	63	39	8	3094.8	49	6	2599.6	61	1	9327
8	1		24	1	2207	39	9	3094.9	49	7	2599.7	62	1	6014.39-1
	Enab. Act § 11		25	1	2210	39	10	3094.10	49	8	2599.8	63	1	1651.1
9	1	442.1	26	1	2182	39	11	3094.11	49	9	2599.9	63	2	1651.2
10	1	142	27	1	6374.1-	39	12	3094.12	49	10	2599.10	63	3	1651.3
11	1	2233.6			6374.7	39	13	3094.13	49	11	2599.11	63	4	1651.4
11	2	2233.7	28	1	9322	40	1	12082.1	49	12	2599.12	64	1	3649.1a
12	1	5668.40-1	29	1	2381.4a	41	1	2815.178	49	13	2599.13	64	2	3649.1b
12	2	5668.40-2	30	1	2381.4b	42	1	1473.5	49	14	2599.14	64	3	3649.1c
12	3	5668.40-3	30	1	2381.4c	42	2	1473.6	49	15	2599.15	64	4	3649.1d
12	4	5668.40-4	30	1	2381.4d	42	3	1473.7	49	16	2599.16	64	5	3649.1e
12	5	5668.40-5	30	1	2381.4f	42	4	1473.8	49	17	2599.17	65	1	1805.21
12	6	5668.40-6	30	1	2381.4i	42	5	1473.9	49	19	2599.18	65	2	1805.23
12	7	5668.40-7	30	3	2381.4m	42	6	1473.10	50	1	10915.12	65	3	1805.24
12	8	5668.40-8	31	1	1525.1	42	7	1473.11	50	2	10915.12a	66	1	466
12	11	5668.40-9	31	2	1525.2	42	8	1473.12	50	3	10915.12b	67	1	2396.4
12	12	5668.40-10	31	3	1525.3	42	9	1473.13	50	4	10915.12c	68	1	9488.1
13	1	2132	31	4	1525.4	42	10	1473.14	51	1	287	69	1	5022
13	2	2133	31	5	1525.5	42	11	1473.15	52	1	4536	70	1	930.5
13	3	2136	32	1	5161	43	1	5118	53	1	4585	70	2	930.6
13	4	2135	33	1	2122.9	43	2	5119	54	1	2815.154	70	3	930.7
13	4	2137	34	1	2000.4	44	1	10039	55	1	4465.9a	71	1	5166.1
14	1	836A	35	1	1675.1	45	1	5486	56	1	3635.1	71	2	5166.2
14	2	836B	35	2	1652-	46	1	4630.29	57	1	5035.1	71	3	5166.3
15	1	5108.5			1675	46	2	4630.30	58	1	349B.1	71	4	5166.4
16	1	1186.3	35	3	1675.3	47	1	3298.19	58	2	349B.2	71	5	5166.5
17	1	2138	36	1	5229	48	1	1871.1	58	3	349B.3	72	1	3649.18
17	2	2139	37	1	4622.1	48	2	1871.2	58	4	349B.4	72	2	3649.19
17	3	2142	38	1	366	48	3	1871.3	58	5	349B.5	72	3	3649.20

1939 SESSION LAWS—Continued

Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.
72	4	3649.21	98	7	6495	124	2	9444.2	128	30	2775-	140	1	1805.87a
72	5	3649.22	98	8	6499	124	3	9444.3			2778.4	140	2	1805.87b
72	6	3649.23	98	9	6500	124	4	9444.4	128	30	6600, 6601	140	3	1805.87c
72	7	3649.24	98	10	6501	124	5	9444.5	129	1	349A.3	140	4	1805.87d
72	8	3649.25	98	11	6502	124	6	9444.6	129	2	349A.6	140	6	1805.87e
72	9	3649.26	99	1	1996	124	7	9444.7	129	3	349A.7	141	1	1805.88b
72	10	3649.27	100	1	2001.1	124	8	9444.8	129	4	349A.9	141	2	1805.88c
72	11	3649.28	100	2	2001.4	124	9	9444.9	129	5	349A.10	141	3	1805.89a
72	12	3649.29	101	1	12288	124	10	9444.10	129	6	349A.10	141	4	1805.88
72	13	3649.30	102	1	191.2	124	11	9444.11	129	7	349A.10	141	5	1805.88a
72	14	3649.31	102	2	191.3	125	1	1760	129	8	349A.11	141	6	1805.88d
72	15	3649.32	103	1	173.1a	126	1	5288.18	129	9	349A.14	141	7	1805.88e
72	16	3649.33	103	2	173.1b	126	2	5288.19	129	10	349A.20	141	8	1805.88f
72	17	3649.34	103	3	173.1c	126	3	5288.20	129	11	349A.23	142	1	23
72	18	3649.35	104	1	7090.1	126	4	5288.21	129	12	349A.23	142	2	23.1
73	1	5132	104	2	7090.2	126	5	5288.22	129	13	349A.26	143	1	2155a
73	2	5133	104	3	7090.3	126	6	5288.23	129	14	349A.30	143	2	2155b
73	3	5134	104	4	7090.4	126	7	5288.24	129	15	349A.27	143	3	2155c
74	1	3324.1	104	6	7090.5	126	8	5288.25	129	16	349A.34	144	1	45
75	1	1262.14	105	1	2214.2	126	9	5288.26	129	17	349A.47	146	1	4235
77	1	9429	106	1	1015(24)	126	10	5288.27	129	18	349A.53	146	2	3575.2
78	1	1575.3	107	1	2239	126	11	5288.28	129	19	349A.72	146	3	3575.3
78	2	1575.4	108	1	1805.61	126	12	5288.29	129	20	349A.72	146	4	4236
78	3	1575.5	108	2	1805.62	126	13	5288.30	129	21	349A.81	146	5	4237
78	4	1575.6	108	3	1805.63	126	14	5288.31	129	22	349A.83	146	6	4238
78	5	1575.7	108	4	1805.58-				130	1	3156	146	7	4240
78	6	1575.8			1805.60	127	1	2484.1	130	2	3157	146	8	4241
79	1	2900	108	4	1805.63-1	127	2	2484.2	130	3	3159	146	9	4242
80	1	6355.13	109	1	2736.7	127	3	2484.3	130	4	3162	146	10	4243
80	2	6355.13a	110	1	7264.14a	127	4	2484.4	130	5	3166	146	11	4244
81	1	678	110	2	7264.14b	127	5	2484.5	130	6	3167	146	12	4245
81	2	681	111	1	3033.26	127	6	2484.6	131	1	4562.4	146	13	4246
81	3	682	111	2	3033.34	127	7	2484.7	131	2	4562.5	146	14	4247
82	1	4139.12	112	1	3614	127	8	2484.8	131	3	4562.6	146	15	4248
83	1	1002	113	1	2433.5	128	1	1840.1	131	4	4562.7	146	16	4249
83	2	1003	114	1	5278.31	128	2	1840.2	131	5	4562.8	146	17	4250
84	1	662	114	2	5278.32	128	3	1840.3	132	1	4573.1	146	18	4251
85	1	3324	115	1	3742	128	4	1840.4	132	2	4573.2	146	19	4252
86	1	3617	116	1	10000	128	5	1840.5	132	3	4573.3	146	20	4253
87	1	3322.1	117	1	1431	128	6	1840.6	132	4	4573.4	146	21	4254
88	1	3564	117	2	1432	128	7	1840.7	132	5	4573.5	146	22	4255
88	2	3593	117	3	1433	128	8	1840.8	132	6	4573.6	146	23	4256
88	3	3594	117	4	1438	128	9	1840.9	133	1	283.2	146	24	4257
88	4	3595	117	5	1439	128	10	1840.10	133	2	283.3	146	25	4258
88	5	3596	117	6	1440	128	11	1840.11	133	3	283.4	146	26	4260
88	6	3597	117	7	1441	128	12	1840.12	133	4	283.5	146	27	4261
88	7	3598	117	8	1443	128	13	1840.13	133	5	283.6	146	28	4263
88	8	3599	117	9	1444	128	14	1840.14	133	6	283.7	146	29	4264
88	9	3600	118	1	10279.9	128	15	1840.15	133	7	383.8	146	30	4264.1
88	10	3601,	119	1	2841	128	16	1840.16	134	1	4728	146	31	3575.1
		3602	119	2	2843	128	17	1840.17	135	1	9479.1	146	31	3575.4-
89	1	4265.1	120	1	1800.1	128	18	1840.18	135	2	9479.2			3575.7
90	1	3626	120	2	1800.2	128	19	1840.19	136	1	5138.2	146	31	3913.1-
91	1	9631	121	1	6175a	128	20	1840.20	136	2	5110.3			3913.24
91	2	9664	121	2	6175b	128	21	1840.21	136	3	5116.2	146	31	4233
92	1	1797.1	122	1	5694.1	128	22	1840.22	136	4	5116.3	146	31	4239
92	2	1797.2	122	2	5694.2	128	23	1840.23	136	5	5110.4	146	31	4264.2
93	1	1760.7	122	3	5694.3	128	24	1840.24	137	1	3033.3	147	1	3776.7
94	1	2214.2	123	1	6815.1	128	25	1840.25	137	2	3033.4	148	1	1200.4-2
95	1	6205.1	123	2	6815.2	128	26	1840.26	137	3	3033.7	149	1	1805.79
96	1	5098	123	3	6815.3	128	27	1840.27	137	4	3033.8	150	1	3228.21
96	2	5108.16	123	4	6815.4	128	28	1840.28	137	5	3033.14	150	2	3228.22
97	1	4880	123	5	6815.5	128	29	1840.29	137	6	3033.19	150	3	3228.23
98	1	6479	123	6	6815.6	128	30	1840.30	138	1	4630.12	150	4	3228.27
98	2	6484	123	7	6815.7	128	30	1838	139	1	5668.13a	150	5	3228.28
98	3	6489	123	8	6815.8	128	30	1841, 1842	139	2	5668.13b	150	6	3228.29
98	4	6490	123	9	6815.9	128	30	2763, 2764	139	3	5668.13c	150	7	3228.30
98	5	6491	123	11	6815.10	128	30	2767, 2768	139	4	5668.13d	150	8	3228.31
98	6	6494	124	1	9444.1	128	30	2770	139	5	5668.13e	151	1	2634.1

1939 SESSION LAWS—Continued

Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.
151	2	2634.5	167	1	3033.9a	175	18	3171.	195	3	4506.3	204	23	2640.23
151	3	2634.6	167	2	3033.12a			3172	195	4	4506.4	204	24	2640.24
151	4	2634.7	168	1	1444a	175	18	3178-	195	5	4506.5	204	25	2640.25
151	5	2634.8	168	2	1444b			3184	195	6	4506.6	204	26	2639.1-
151	6	2634.9	168	3	1444c	175	18	3202.7-	195	7	4506.7			2640
151	7	2634.11	168	4	1444d			3202.9	195	8	4506.8	204	26	2640.26
151	8	2634.12	168	5	1444e	175	18	3202.13a	195	9	4506.9	205	1	5101.1
151	9	2634.13	168	6	1444f	176	1	4464	195	10	4506.10	205	2	5101.2
151	10	2634.14	168	7	1444g	177	1	3350.7	195	11	4506.11	206	1	1008
151	11	2634.15	168	8	1444h	177	2	3350.8	195	12	4506.12	207	1	1262.83
152	1	11737	168	9	1444i	177	3	3350.1	195	13	4506.13	208	1	7364.29-1
153	1	8706.1	169	1	1200.4	177	4	3350.2	195	14	4506.14	208	2	7364.29-2
154	1	24	170	1	681.1	177	5	3350.10	195	15	4506.15	208	3	7364.29-3
155	1	25	171	1	2147.3	177	6	3350.11	195	16	4506.16	208	4	7364.29-4
156	1	372	171	2	2147.4	177	7	3350.9a	195	17	4506.17	208	5	7364.29-5
156	2	1556	172	1	6396.1	177	8	3350.12a	195	18	4506.18	208	6	7364.29-6
157	1	4465.3a	172	2	6396.2	177	9	3350.3	195	19	4506-	208	7	7364.29-7
158	1	930.8	172	3	6396.3	177	9	3350.9			4513.2	208	8	7364.29-8
158	2	930.9	172	4	6396.4	177	9	3350.15	195	19	4606.19	208	9	7364.29-9
158	3	930.10	172	5	6396.5	178	1	1224.3	195	20	4606.20	208	10	7364.29-10
158	4	930.11	172	6	6396.6	178	2	1224.4	196	1	9632	208	11	7364.29-11
158	5	930.12	172	7	6396.7	178	3	1224.6	197	1	10921	208	12	7364.29-12
158	6	930.13	172	8	6396.8	178	4	1224.10	198	1	1742.1	208	13	7364.29-13
158	7	930.14	172	9	6396.9	178	5	1224.11	198	2	1742.2	208	14	7364.29-14
158	8	930.15	172	10	6396.10	178	6	1224.16	198	3	1742.3	208	15	7364.29-15
158	9	930.16	172	11	6396.11	178	7	1224.17	198	4	1742.4	208	16	7364.29-16
158	10	930.17	172	12	6396.12	179	1	214	198	5	1742.5	208	17	7364.29-17
158	11	930.18	172	13	6396.13	180	1	219	198	6	1742.6	208	18	7364.29-18
158	12	930.19	172	14	6396.14	181	1	2235	198	7	1742.7	208	19	7364.29-19
159	1	1262.37	172	15	6396.15	182	1	5278.10	199	1	3083.6	208	20	7364.29-20
160	1	1262.99a	172	16	6396.16	182	2	5199.2	199	2	3083.7	208	21	7364.29-21
160	2	1262.99b	172	17	6396.17	182	2	5278.10a	200	1	2317	208	22	7364.29-22
160	3	1262.99c	172	18	6396.18	183	1	4208.2	200	2	2323	208	23	7364.29-23
160	4	1262.99d	172	19	6396.19	183	2	4208.6	201	1	2222	208	24	7364.29-24
160	5	1262.99e	172	20	6396.20	183	3	4208.7	201	2	2222.1	208	25	7364.29-25
160	6	1262.99f	172	21	6396.21	183	4	4208.9	202	1	1132.1	208	26	7364.29-26
160	7	1262.99g	172	22	6396.22	183	5	4208.10	202	3	1132.8	208	27	7364.29-27
161	1	1400.1	172	23	6396.23	184	1	1751.2	203	1	8883	208	28	7364.29-28
161	2	1400.2	172	24	6396.24	184	2	1751.3	203	2	8885	208	29	7364.29-29
161	3	1400.3	172	25	6396.25	184	3	1751.4	203	3	8886	208	30	7364.29-30
161	4	1400.4	172	26	6396.26	184	4	1751.5	203	4	8887	208	32	7364.29-31
161	5	1400.5	172	27	6396.27	184	5	1751.6	203	5	8889	208	32	7364.7-
161	6	1400.6	172	28	6396.28	184	6	1751.7	203	6	8890			7364.29
162	1	2091.1	172	29	6396.29	184	7	1751.9	203	7	8893	209	7	335.17-7
163	1	2428.1	172	30	6396.30	185	1	7135.1	203	8	8894	210	1	1754.27
163	2	2428	172	31	6396.31	185	2	7135.2	203	9	8895	210	2	1754.28
163	3	2428.3				185	3	7135.3	203	10	8890.1	210	3	1754.29
163	4	2428.4	173	1	6269	185	4	7135.4	204	1	2640.1	210	4	1754.30
163	5	2428.5	173	2	6269.1	185	5	7135.5	204	2	2640.2	210	5	1754.31
163	6	2428.6	174	1	3685	185	6	7135.6	204	3	2640.3	210	6	1754.32
163	7	2428.7	174	1	3685.3	185	7	7135.7	204	4	2640.4	210	7	1754.33
163	8	2428.8	174	2	3417.17	185	8	7135.8	204	5	2640.5	210	8	1754.34
163	9	2428.9	175	1	3170	185	9	7135.9	204	6	2640.6	210	9	1754.35
163	10	2428.10	175	2	3170.1	186	1	9111	204	7	2640.7	210	10	1754.36
163	11	2428.11	175	3	3173	187	1	7136	204	8	2640.8	210	11	1754.37
163	12	2428.12	175	4	3174	188	1	4630.6-2	204	9	2640.9	210	12	1754.38
163	13	2428.13	175	5	3175	188	2	4630.6-3	204	10	2640.10	210	13	1754.39
163	14	2428.14	175	6	3176	189	1	1757.1	204	11	2640.11	210	14	1754.40
164	1	5668.13f	175	7	3177	189	2	1757.2	204	12	2640.12	210	15	1754.41
164	2	5668.13g	175	8	3202.7a	190	1	5624-5637	204	13	2640.13	210	16	1754.42
164	3	5668.13h	175	9	3202.7b	191	1	2196	204	14	2640.14	210	17	1754.43
165	1	173.2-	175	10	3202.10	192	1	10178	204	15	2640.15	210	18	1754.44
		173.20	175	11	3202.7c	193	1	2208.1	204	16	2640.16	210	19	1754.45
165	1	173.21	175	12	3202.7d	193	2	2208.1e	204	17	2640.17	210	20	1744.1
165	2	173.22	175	13	3202.7e	194	1	2707.1	204	18	2640.18	210	20	1754.6
165	3	173.23	175	14	3202.7f	194	2	2707.2	204	19	2640.19	211	1	1741.9
165	4	173.24	175	15	3202.11	194	3	2707.3	204	20	2640.20	212	1	6711
165	5	173.25	175	16	3202.12	195	1	4506.1	204	21	2640.21	212	2	6713
166	1	1263.5	175	17	3202.13	195	2	4506.2	204	22	2640.22	213	1	2396.3

1939 SESSION LAWS—Continued

Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.	Ch.	Sec.	'39 Supp.
214	1	2429.24	214	12	2429.35	217	3	1262.44-A	219	1	10068	222	4	3228.4
214	2	2429.25	214	13	2429.36	217	4	1262.81	220	1	2815.17	222	5	3228.5
214	3	2429.26	214	14	2429.37	217	5	1263.8	220	2	2815.25	222	6	3228.7
214	4	2429.27	214	15	2429.38	218	1	3154.1	220	3	2815.25a	222	7	3228.8
214	5	2429.28	215	1	1132.1	218	2	3154.2	220	4	2815.25b	222	8	3228.9
214	6	2429.29	215	2	1132.4	218	3	3154.3	221	1	2815.167	222	9	3228.10
214	7	2429.30	215	3	1132.5	218	4	3154.4	221	2	2815.168	222	10	3228.11
214	8	2429.31	215	4	1132.6a	218	5	3154.5	221	3	2815.174	222	11	3228.13
214	9	2429.32	216	1	11688	218	6	3154.6	222	1	3228.1	222	12	3228.15
214	10	2429.33	217	1	1010A	218	7	3154.10	222	2	3228.2	222	13	3228.16
214	11	2429.34	217	2	1013	218	8	3154.11	222	3	3228.3	222	14	3228.17

1939 APPENDIX

Initiative No. 41:		Initiative No. 41:		Initiative No. 41:		Initiative No. 41:	
Page 743,		Page 743,		Page 743,		Page 743,	
§ 1	2381.4a	§ 4	2381.4d	§ 7	2381.4g	§ 11	2381.4j
Page 743,		Page 743,		Page 743,		Page 743,	
§ 2	2381.4b	§ 5	2381.4e	§ 8	2381.4h	§ 12	2381.4k
Page 743,		Page 743,		Page 743,		Page 743,	
§ 3	2381.4c	§ 6	2381.4f	§ 9	2381.4i	§ 13	2381.4L

The Enabling Act

§ 4. Second.

1936. Where, in allotting lands to individual Indians, the trust patents reserved oil and gas for the benefit of the tribe, such lands were subject to the state gross production tax, operators' net proceeds tax, and royalty owners' net proceeds tax on oil produced from such lands, under federal statute approved Feb. 28, 1891, section 3, 26 Stat. 795, giving state the right to tax oil produced on unallotted Indian lands, for as to the oil rights they were unallotted. *Santa Rita Oil & Gas Co. v. Board of Equalization*, 101 Mont. 268, 54 P. (2d) 117.

1936. The title of the United States may be extinguished by allotment of the Indian lands and a patent in fee, free from any trust provisions either by specific grant or expiration of the trust period specified in the allotment deed. *State v. Youpee*, 103 Mont. 86, 61 P. (2d) 832.

§ 11. The state of Montana hereby accepts the amendment to section eleven of the act approved February 22, 1889, (25 Stat. 676), relating to the admission into the union of the states of North Dakota, South Dakota, Montana and Washington, approved by the President of the United States June 25, 1938, which amendment reads as follows:

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That so much of the second paragraph of section 11 of the act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, as amended, as reads 'but leases for grazing and agricultural purposes shall not be for a term longer than five years', is amended to read as follows; 'but leases for grazing and agricultural purposes shall not be for a term longer than ten years'." Approved June 25, 1938. [Acceptance enacted by L. '39, Ch. 8, § 1. Approved and in effect February 7, 1939.

Section 2 repeals conflicting laws.

1938. An agreement by the state board of land commissioners pooling school lands with those of private owners, under a unit operation plan, wherein it was provided that land owners could use gratis what gas they needed for domestic purposes did not violate the enabling act, the constitution, or statutory provisions, since such provisions were rightly considered in determining what the market value of the interest of the state was at the time the agreement was made. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. An agreement of the state land board to pool school lands with those of private owners for the development of gas wells and production of gas therefrom, and apportioning royalties among the owners, was held to fully protect the state's rights to the gas.

Toomey v. State Board of Land Commissioners, 106 Mont. 547, 81 P. (2d) 407.

1938. Where it was contended that the state board, by pooling school lands with those of private owners of land under an agreement for the exploiting of the gas resources thereof under an agreement for unit operation, relinquished the state's royalties therefrom to the owners of the remainder of the land, the court said that the contention overlooked the migratory nature of gas. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. The state land board has the duty of insuring to the state the full market value of the estate disposed of, in making oil and gas leases under an agreement to operation under the unit plan, and receiving the proceeds and providing that they remain intact, and on such determination this court will not substitute its opinion for the opinion of the board, nor will it control the discretion of the board unless it appears that the action of the board is arbitrary and, in effect, fraudulent. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. When an estate or interest in state lands is sold, as distinguished from the land itself, there need not be a public sale and advertising unless the legislature so directs, and the legislature has power to determine the method by which to ascertain the full market value of the estate or interest. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. Under this section the state may enter into pooling agreements and lease school lands thereunder for the exploitation of the gas resources thereof, *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407, even though § 1882.2 be regarded as authorizing a sale of an estate or interest in land.

1938. The state board of land commissioners has the right to change or modify existing oil and gas leases of school lands in any respect not inconsistent with the enabling act, the constitution, or the statutes. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. Under this section the state board of land commissioners may lease school lands under a pooling agreement for unit operation for the exploiting of gas resources, citing L. '33, Ch. 84. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

§ 14.

1936. The board of education would not violate the constitutional provisions relative to state finances, appropriations, disbursements, and indebtedness, by pledging the income and interest from the university land grant fund as security for money borrowed from the federal government for the erection of a journalism building at the state university. *State ex rel. Wilson v. State Board of Education*, 102 Mont. 165, 56 P. (2d) 1079.

1936. The board of education is authorized, without approval of electors, to borrow funds from the federal government to erect a chemistry-pharmacy building in connection with the Montana state uni-

versity at Missoula under laws of extraordinary session 1933-34, chapter 24, as amended by chapter 36 of the same session and to issue bonds pledging the income and interest from the university land grant contained in section 14 of the enabling act. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

1936. Under sections 877.6 et seq. the board of education had the power to borrow money for the erection of a journalism building at the state university and to pledge therefor the income and interest from the university land grant fund. State ex

rel. Wilson v. State Board of Education, 102 Mont. 165, 56 P. (2d) 1079.

§ 17.

1936. Under sections 877.6 et seq. the board of education had the power to borrow money for the erection of a journalism building at the state university and to pledge therefor the income and interest from the university land grant fund. State ex rel. Wilson v. State Board of Education, 102 Mont. 165, 56 P. (2d) 1079.

Constitution of the State of Montana

ARTICLE II

Military Reservations

Section 1.

1937. This article is not a limitation upon the legislative power, but is a solemn mandate to the legislature, directing it to pass the legislation necessary to carry the provisions of the article into operation. *State v. Bruce*, 104 Mont. 500, 69 P. (2d) 97.

1937. The word "purchase," as used in this article does not have the technical meaning of the term at common law of an acquisition of lands other than by descent or inheritance, but has the meaning of an acquisition thereof by an actual purchase. *State v. Bruce*, 104 Mont. 500, 69 P. (2d) 97.

ARTICLE III

A Declaration of Rights of the People of the State of Montana

Section 1. ✓

1937. Under section 4810 and other statutory and constitutional provisions, an elector may inspect petitions for a referendum in the possession of the recorder and county clerk, whether or not they be regarded as public records. *State ex rel. Halloran v. McGrath*, 104 Mont. 490, 67 P. (2d) 838.

Sec. 2. ✓

1937. Under section 4810 and other statutory and constitutional provisions, an elector may inspect petitions for a referendum in the possession of the recorder and county clerk, whether or not they be regarded as public records. *State ex rel. Halloran v. McGrath*, 104 Mont. 490, 67 P. (2d) 838.

Sec. 3.

1939. ✓ Chapter 14A of this code, L. '37, Ch. 80, the unfair practices act, does not violate this section. *Associated Merchants of Montana v. Ormesher*, 107 Mont. 530, 86 P. (2d) 1031.

Sec. 6.

1937. ✓ The penalty of 10 per cent interest mentioned in this section is limited to resort to the courts where litigation is unjustified, leaving to the courts the determination as to whether it was or not. In *re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

1936. ✓ The constitution, article 3, section 6, does not give a right of action against the abutting owner for an injury caused a pedestrian by the bad condition of a sidewalk, because section 5080.1 provides that the municipality shall be immune from liability for such an injury, on the theory that otherwise the injured person would have no remedy. *Stewart v. Standard Publishing Co.*, 102 Mont. 43, 55 P. (2d) 694.

1936. ✓ This section means no more nor less than that the courts must be accessible to all persons alike, without discrimination, at the time or times, and the place or places, appointed for their sitting, and afford a speedy remedy for every wrong recognized

by the law as being remediable in a court. The term "injury" means such an injury as the law recognizes or declares to be actionable. *Stewart v. Standard Publishing Co.*, 102 Mont. 43, 55 P. (2d) 694.

Sec. 7.

1938. ✓ Probable cause shown by evidence for search, seizure, and arrest of person accused of conducting lottery. *State ex rel. Wong You v. District Court*, 106 Mont. 347, 78 P. (2d) 353.

1935. ✓ Section 3228.22, exempting barbers from examination, before being granted a license, who were practicing in Montana when the barber act went into effect, while not exempting practicing barbers from other states, held not to violate either the fourteenth amendment of the United States constitution, or the constitution of Montana Art. 3, § 7, or Art. 5, § 26. *State v. Bays*, 100 Mont. 125, 47 P. (2d) 50.

Sec. 8.

1939. ✓ Section 12223 does not apply to appeals to the district from the justice court, since their prosecution is by complaint and not by information or indictment, as in the district court. *State v. Schnell*, Mont., 88 P. (2d) 19.

1935. ✓ An information can only be filed after examination and commitment where leave to file of court has never been obtained. *State v. Foot*, 100 Mont. 33, 48 P. (2d) 1113.

1935. ✓ An information may be filed on leave of court after the court has continued a preliminary hearing more than ten days without consent of the defendant. *State v. Foot*, 100 Mont. 33, 48 P. (2d) 1113.

Sec. 10.

1936. ✓ The corrupt practices act does not violate the constitution, Art. 3, § 10, since the constitution was not intended to extend immunity for every use or abuse of language. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

1936. ✓ Contempt proceedings, as against the press, do not invade the constitutional right of freedom of speech if the publications intended merely to delude and defame. In *re Nelson et al.*, 103 Mont. 43, 60 P. (2d) 365.

1935. ✓ The provision that the jury, under the direction of the court, shall determine the law and the facts indicate no purpose to require the court to abdicate its jurisdiction, as to matters of pleading and practice, to the jury. *Miller Ins. Agency v. Home Fire & Marine Ins. Co. of California*, 100 Mont. 551, 51 P. (2d) 628, holding that the court should grant a nonsuit whenever there is no evidence in support of plaintiff's case, or the evidence is so unsubstantial that the court would feel compelled to set aside a verdict, if one should be rendered for the plaintiff.

1935. ✓ To found liability for libel upon a communication prima facie privileged, actual, and not implied, malice must be shown. *Miller Ins. Agency v. Home Fire & Marine Ins. Co. of California*, 100 Mont. 551, 51 P. (2d) 628.

Sec. 11.

1938. Section 335.17-1 et seq., which authorized a county to issue relief warrants, did not imply that a levy of taxes after the expiry of the act, to pay them, would be invalid, and thus impair the obligation of the county in violation of this section. *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

1938. In determining the constitutionality of a statute every possible presumption must be indulged in favor of its validity. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1936. The remedy subsisting in the state when and where a contract is made and is to be performed is a part of its obligation, and any subsequent law of the state which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the United States and Montana constitutions, and is, therefore, void. The ideas of right and remedy are inseparable. Want of right and want of remedy are the same thing. *Rieger v. Wilson*, 102 Mont. 86, 56 P. (2d) 176.

1935. This section held not violated by sections 2096.1 and 2096.2, as to impairing the obligations of contracts. *Forbes v. Mid-Northern Oil Co.*, 100 Mont. 10, 45 P. (2d) 673.

Sec. 14.

1939. Housing projects, being for a public use, granting to the housing authority the right of eminent domain did not violate this section. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

Sec. 15.

1938. In an action to enjoin the diversion of water from a creek it was held that the appropriators in selling a community the water devoted it to a public use. *Sherlock v. Greaves*, 106 Mont. 206, 76 P. (2d) 87.

1938. An appropriation of water may be made for the purpose of sale or rent. *Sherlock v. Greaves*, 106 Mont. 206, 76 P. (2d) 87.

1938. Under sections 7113-7116 prior appropriators of water who sold water to a community had the right to enjoin the members thereof from diverting such water or using diverted water in violation of the appropriator's rights, in the absence of a showing of tender of rates established by law. *Sherlock v. Greaves*, 106 Mont. 206, 76 P. (2d) 87.

1938. This section was not violated by the water conservation board by the issuance of revenue bonds to take up relief emergency warrants issued by a county to raise funds for the construction of a reservoir to store and furnish water for the irrigation of lands of stockholders of a water users' association where the bonds were secured solely by such water-works and revenue derived from the operation thereof. *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

1935. Every citizen is entitled to divert and use waters in streams so long as he does not infringe upon the rights of some other citizen who has acquired a prior right by appropriation. *State ex rel. Reeder v. District Court*, 100 Mont. 376, 47 P. (2d) 653.

Sec. 16.

1939. Before a defendant who on appeals from justice court can avail himself of the guaranty of a speedy trial he must make proper demand, and cannot rely on section 12223. *State v. Schnell*, Mont., 88 P. (2d) 19.

1939. The constitutional provision for speedy trial is self-executing. *State v. Schnell*, Mont., 88 P. (2d) 19.

Sec. 17.

1936. Corrupt practices act is not violative of constitution. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

Sec. 23.

1936. This section applies only to cases where right of trial by jury existed at the time of the adoption of the constitution, and as the right did not exist in equity suits then, it does not exist now. *Merchants Fire Assurance Corporation v. Watson*, 104 Mont. 1, 64 P. (2d) 617.

Sec. 27.

1939. This section is not violated by section 3089. *Britt v. Cotter Butte Mines, Inc.*, Mont., 89 P. (2d) 266.

1939. Chapter 14A of this code, L. '37, Ch. 80, the unfair practices act, does not violate this section. *Associated Merchants of Montana v. Ormesher*, 107 Mont. 530, 86 P. (2d) 1031.

1938. So far as due process of law is concerned a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose, and the courts are without power to override such policy. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938. Section 10412, requiring notice to be given to an alleged incompetent of a hearing to determine his fitness to manage his property, but not requiring notice to any other person, does not violate this section. *State ex rel. Haynes v. District Court*, 106 Mont. 578, 81 P. (2d) 422.

1938. While Const. Art. 18, § 4, as amended in 1936, is without controlling effect upon the constitutionality of 3073.1, enacted prior thereto, it is of some significance in the sense that it served to disclose the existence of a public purpose or policy of the state relating to the hours of labor. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938. Liberty to contract is necessarily subordinate to reasonable restraint and regulation by the state in the exercise of its sovereign prerogative police power. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938. In determining the constitutionality of a statute every possible presumption must be indulged in favor of its validity. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1937. Sections 828.1 et seq. are not violative of either the federal constitution or state constitution, Art. 3, § 27, since a public office is a public trust or agency created for the benefit of the people in which the incumbent has no property right, and therefore cannot be deprived of property by a recount. *State ex rel. Riley v. District Court*, 103 Mont. 576, 64 P. (2d) 115, nor do they violate the due process of law provisions.

1937. The law concerning the registration, licensing, and taxation of motor vehicles, section 1759 et seq., as amended by L. '37, Ch. 72, does not violate the due process clause of the constitution. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1936. In an action against a foreign association doing business in this state, a summons may be served on the resident manager, or agent, although

the association is not a joint-stock association. State ex rel. Cook v. District Court, 102 Mont. 424, 58 P. (2d) 273, holding also that section 9111 is not invalid, as thus construed, as violative of the due process clause.

1936. Sections 1301.1 et seq. do not violate Const. Art. 3, § 27, due process clause. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

1936. As to drugs and medicines which are sold in the manufacturers' original packages, and the sale of which is not specifically prohibited by other statutes, this act is not a valid exercise of the police power, and hence is unconstitutional. State v. Stephens, 102 Mont. 414, 59 P. (2d) 54.

1935. Cited in State ex rel. Kern v. Arnold, 100 Mont. 346, 49 P. (2d) 976.

1935. Sections 173.2 et seq., providing for state insurance of public property, are unconstitutional as regards cities and towns. State ex rel. City of Missoula v. Holmes, 100 Mont. 256, 47 P. (2d) 624.

Sec. 29.

1936. The maxim "inclusio unius est exclusio alterius," being only a rule of interpretation and not a constitutional command, held that the two methods of taxation mentioned or provided for in section 1 of article 12 of the constitution are not exclusive, and that the legislature has the power to adopt other methods of taxation which are not prohibited by some other section of the constitution. State v. Driscoll, 101 Mont. 348, 54 P. (2d) 571.

ARTICLE IV

Distribution of Powers

Section 1.

1938. ✓ Cited in State ex rel. Public Service Commission v. District Court, 107 Mont. 240, 84 P. (2d) 335, holding that the legislature, acting through the public service commission or otherwise, cannot exercise judicial powers.

1936. ✓ If an act but authorizes the administrative officer or board to carry out the definitely expressed will of the legislature, although procedural directions and the things to be done are specified only in general terms, it is not vulnerable to the criticism that it carries a delegation of legislative power. State v. Andre, 101 Mont. 366, 54 P. (2d) 566.

1936. ✓ The purpose of this provision is to constitute each department an exclusive trustee of the power vested in it, accountable to the people alone for its faithful exercise, so that each may act as a check upon the other, and thus may be prevented the tyranny and oppression which would be the result of a lodgment of all power in the hands of one body. Each department must therefore refrain from asserting a power that does not belong to it, for the assertion of such power is equally a violation of the trust; and it is apparent that one department cannot lawfully delegate any of its powers to another or to any person or body. State v. Andre, 101 Mont. 366, 54 P. (2d) 566.

1936. ✓ While the legislature may create and abolish school districts and change the boundaries thereof, such action is usually provided for by general laws in which the legislature formulates the policy broadly, leaving the working out of the details to designated officers. Such provisions—and of such are sections 1301.1 et seq.—do not violate the provisions of the constitution against delegating legislative power to

administrative officers. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

ARTICLE V

Legislative Department

Section 1.

1939. ✓ An act, although subject to referendum, is in full force and effect until suspended by the filing of a proper referendum petition, and bonds issued by the state in the interim would be valid obligations of the state. Lodge v. Ayers, Governor, et al., Mont., 91 P. (2d) 691.

1939. ✓ Highway debentures act of 1938 (§ 2381.4a et seq.) is not an act relating to an "appropriation" of money within the meaning of Const. Art. 5, §§ 1, 34. Martin v. State Highway Commissioners, Mont., 88 P. (2d) 41.

1939. ✓ Qualifications of signers of initiative petition could not be questioned where it did not appear that number of signers claimed to be disqualified were enough to reduce eligible signers below the required 8 per cent. Martin v. State Highway Commissioners, Mont., 88 P. (2d) 41.

1939. ✓ This section, in regard to initiative, has application only when an appropriation is made from the general fund, or from an existing fund. Martin v. State Highway Commissioners, Mont., 88 P. (2d) 41.

1938. ✓ The element of time contemplated by the inclusion of the word "immediate," as used in this section in the definition of emergency is necessary to free an act of referendum, and prescribe an essential condition in the declaration of the existence of an emergency. State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

1938. ✓ The liquor control act, sections 2815.164 to 2815.204 (Ch. 84 of the Laws of 1937), is neither an emergency act nor an appropriation act, and is subject to referendum. State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

1938. ✓ The liquor control act, section 2815.164 et seq. (Laws of 1937, Ch. 84) is not a law relating to appropriations of money within the purview of Art. 5, § 1 of the constitution in regard to referendums. State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

1938. ✓ "Immediate preservation of the public peace, health, or safety," held not coextensive with the term "police power," which is more inclusive. State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

1938. ✓ In spite of any attempt by the legislature to define an act as an emergency act it must stand an acid test in the courts as to its actual character. State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

1938. ✓ In the absence of a declaration of immediate necessity for the going into effect of an act the court may decide from its contents whether it is an emergency act. State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

1937. ✓ Under section 4810 and other statutory and constitutional provisions, an elector may inspect petitions for a referendum in the possession of the recorder and county clerk, whether or not they be regarded as public records. State ex rel. Halloran v. McGrath, 104 Mont. 490, 67 P. (2d) 838.

1937. ✓ The state insurance act, sections 173.2-173.20, L. '35, Ch. 179, was in full force and effect during the interim allowing the people to act between its operative date, as declared in the act itself, and the date of the declaration of the result of the election. *Fitzpatrick v. State Board of Examiners*, 105 Mont. 234, 70 P. (2d) 285.

1936. ✓ While the legislature may create and abolish school districts and change the boundaries thereof, such action is usually provided for by general laws in which the legislature formulates the policy broadly, leaving the working out of the details to designated officers. Such provisions—and of such are section 1301.1 et seq.—do not violate the provisions of the constitution against delegating legislative power to administrative officers. *State ex rel. Berthot v. Gallatin County High School District*, 102 Mont. 356, 58 P. (2d) 264.

1936. ✓ Initiative ballot on measure to tax stores held defective and not substantially, or at all, meeting the requirements of the law, particularly in that neither the title nor the legend were descriptive of the measure proposed, and that the ballot contained neither the affirmative nor the negative of the proposed measure, and that no opportunity was afforded the voter to express his will as to whether he was in favor of or opposed to the proposed measure. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. ✓ The provisions of sections 103 and 104, initiative ballots, are mandatory, and not directory, and a substantial compliance therewith must be had. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1935. ✓ Laws of 1935, chapter 61, §§ 1, 2, concerning the extensions of leases of state lands for grazing purposes, was not, because of provision giving lessee an option, a delegation of legislative powers, in violation of constitution, article 5, § 1. *Leuthold v. Brandjord*, 100 Mont. 96, 47 P. (2d) 41.

Sec. 7.

1936. In a proceeding by the attorney general by quo warranto to oust a state senator from the office of relief commissioner under Chapter 109 of the Laws of 1935, the supreme court was only interested in ascertaining if the act was in accordance with the powers and restrictions conferred and reposed by the people themselves, by the terms of the constitution; holding that it is only when acts are clearly without and in contravention of such powers that the court will move to nullify them. *State ex rel. Nagle v. Kelsey*, 102 Mont. 8, 55 P. (2d) 685.

1936. ✓ A duly elected, qualified, and acting state senator of the state of Montana was ineligible to appointment as a relief commissioner under Chapter 109 of the Laws of 1935, and was ineligible to hold the office, exercise its powers, or collect its emoluments. *State ex rel. Nagle v. Kelsey*, 102 Mont. 8, 55 P. (2d) 685.

1936. ✓ The essential attributes of a public office are set forth at length in *State ex rel. Nagle v. Kelsey*, 102 Mont. 8, 55 P. (2d) 685.

1936. ✓ The purposes of Chapter 109 of the Laws of 1935 were to aid directly in the relief of the adverse conditions enumerated, and to create some responsible legal agency of the state endowed with the power, discretion, and capacity to cooperate with and contract with the federal government in all matters germane to the general relief purposes designated in the act, and to bind the state in that behalf. *State ex rel. Nagle v. Kelsey*, 102 Mont. 8, 55 P. (2d) 685.

Sec. 9.

1938. ✓ The recount statute, section 828.1 et seq., does not infringe on the right of the legislature to judge of the elections, returns, and qualifications of its members. *State ex rel. Ainsworth v. District Court*, 107 Mont. 370, 86 P. (2d) 5.

1938. ✓ It is elementary that the courts cannot try contests for seats in the legislature and decide issues involved in such contests. *State ex rel. Ainsworth v. District Court*, 107 Mont. 370, 86 P. (2d) 5.

1938. ✓ "We are unable to see wherein a recount by the duly constituted board of canvassers can infringe upon the right of a house of the legislative assembly to judge of the elections, returns, and qualifications of its members." *State ex rel. Ainsworth v. District Court*, 107 Mont. 370, 86 P. (2d) 5.

Sec. 12.

1937. Cited in *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619, dissenting opinion.

Sec. 17.

1936. Section 17 of Art. 5 of the constitution has to do with violations of law while in office and has nothing to do with election contests, since if the candidate has been guilty of corrupt practices in running for office his election is void and he holds no office. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

Sec. 18.

1937. ✓ In quo warranto proceedings to determine whether highway commissioners were properly removed by the governor and others appointed in their stead, the supreme court decided that the action of the governor should be upheld, since he was, by law, made the sole arbiter of the controversy, that the decision was his, and that it was unnecessary for the court to weigh, consider, or appraise the testimony heard by him, though the court might have decided the matter differently from the way he decided it. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1937. The word "misconduct," as used in this constitutional provision, has been explained as "any act involving moral turpitude, or any act which is contrary to justice, honesty, principle, or good morals, if performed by virtue of office or by authority of office." Neither the constitution nor the codes require that misconduct in office shall be wilful in order to justify the removal of an officer. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1937. In proceedings to remove highway commissioners the governor acts not only under the pertinent statute, but also under the constitution, and where acting in his executive capacity he cannot be controlled by the courts, except in case of arbitrary action. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

Sec. 19.

1937. Sections 2439.1 et seq. held not invalid as changing the purpose of the original bill as introduced in the legislature. *State ex rel. Griffin v. Greene*, 104 Mont. 460, 67 P. (2d) 995.

Sec. 22.

1936. ✓ The provisions of sections 103 and 104, initiative ballots, are mandatory, and not directory, and a substantial compliance therewith must be had. *Saw-*

yer Stores, Inc. v. Mitchell, 103 Mont. 148, 62 P. (2d) 342.

1936. ✓ Initiative ballot on measure to tax stores held defective and not substantially, or at all, meeting the requirements of the law, particularly in that neither the title nor the legend were descriptive of the measure proposed, and that the ballot contained neither the affirmative nor the negative of the proposed measure, and that no opportunity was afforded the voter to express his will as to whether he was in favor of or opposed to the proposed measure. Sawyer Stores, Inc. v. Mitchell, 103 Mont. 148, 62 P. (2d) 342.

Sec. 23.

1939. ✓ All that is required to meet the constitutional provision, is that the act shall be germane to the subject expressed in the title. It is not necessary that the title shall embody the exact methods of application or procedure, when the general object is plainly expressed. Lodge v. Ayers, Governor, et al., Mont., 91 P. (2d) 691.

1939. ✓ The title of highway debentures initiative act of 1938, sections 2381.4a-2381.4m, does not violate Constitution Article 5, § 23, as containing more than one subject not expressed in title. Martin v. State Highway Commissioners, Mont., 88 P. (2d) 41.

1939. ✓ The purpose of this section is to restrict the legislature to the enactment of laws the objects of which legislators and the public as well may be advised of, to the end that any who are interested, whether as representatives or those represented, may be intelligently watchful of the course of the pending bill. The limitation is likewise designed to prevent legislators and the people from being misled by false or deceptive titles, and to guard against fraud in legislation by way of incorporating into a law provisions concerning which neither legislators nor the public have had any intimation through the title read or published. Martin v. State Highway Commissioners, Mont., 88 P. (2d) 41.

1937. ✓ Sections 828.1-828.7 held not unconstitutional on the ground that the subject was not clearly expressed in the title. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

1936. ✓ By this provision it is intended that the act shall be germane to the subject expressed in the title. "Germane" means in close relationship, appropriate, relevant, pertinent. It is not necessary that the title shall embody the exact method of application or procedure where the general object is plainly expressed. Where the degree of particularity necessary to be expressed in the title of the act is not indicated by the constitution itself, as here, the courts should not embarrass legislation by technical interpretations based on mere form or phraseology. The test is whether the title is of such a character as to mislead the public or members of the legislature as to the subject embraced in the act. The court has no right to hold the title void because in its opinion a better one might have been used. State v. Driscoll, 101 Mont. 348, 54 P. (2d) 571.

1936. ✓ Where it is sought to regulate a particular business by law and to put a statute regulating it into effective and practical operation, there must be punishments prescribed and imposed on those who violate its commands, but such penalties need not be included in the title if they are but the end and means necessary or convenient for the accomplishment of the general object. State v. Driscoll, 701 Mont. 348, 54 P. (2d) 571.

1936. ✓ The Montana liquor control act, Laws of 1933, Chapter 105, held not unconstitutional as violative of Const. Art. 5, § 23, in regard to the requirements as to the titles of acts. State v. Driscoll, 101 Mont. 348, 54 P. (2d) 571.

1936. ✓ Title of L. '29, Ch. 31, § 2191, held to express the subject of the statute sufficiently to comply with the requirements of Const. Art. 5, § 23. Martin v. Glacier County, 102 Mont. 213, 56 P. (2d) 742.

1936. ✓ Chapter 135 of the Laws of 1935 did not violate Const. Art. 5, § 23 or § 25. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

1936. ✓ If a statute offends against this mandate of the constitution the court will not hesitate to declare the statute, or so much thereof as is offensive, invalid. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

1936. The provisions of sections 103 and 104, initiative ballots, are mandatory, and not directory, and a substantial compliance therewith must be had. Sawyer Stores, Inc. v. Mitchell, 103 Mont. 148, 62 P. (2d) 342.

1936. Initiative ballot on measure to tax stores held defective and not substantially, or at all, meeting the requirements of the law, particularly in that neither the title nor the legend were descriptive of the measure proposed, and that the ballot contained neither the affirmative nor the negative of the proposed measure, and that no opportunity was afforded the voter to express his will as to whether he was in favor of or opposed to the proposed measure. Sawyer Stores, Inc. v. Mitchell, 103 Mont. 148, 62 P. (2d) 342.

1935. ✓ The 1933 amendment to section 4884 held invalid, as far as reducing the mileage of witness is concerned, as the title of the act did not direct the attention truly to the purpose of the act to deal with the question of witnesses. Coolidge v. Meagher, 100 Mont. 172, 46 P. (2d) 684.

Sec. 25.

1939. ✓ If an amending act is independent and complete in itself, requiring no reference to any other statute to determine its meaning and scope it does not offend against this provision. Northern Pac. Ry. Co. v. Dunham, Mont., 90 P. (2d) 506.

1939. ✓ The purpose of this section is to prevent the uncertainty arising from amending statute by striking out words and inserting others, or mingling new provisions with the old so as to make it necessary to read both statutes to determine what the law is. Northern Pac. Ry. Co. v. Dunham, Mont., 90 P. (2d) 506.

1939. ✓ This provision applies only to laws which are strictly amendatory or revisory and which are unintelligible without reference to the former statute. Northern Pac. Ry. Co. v. Dunham, Mont., 90 P. (2d) 506.

1936. ✓ Chapter 135 of the Laws of 1935 did not violate Const. Art. 5, § 23 or § 25. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

1936. ✓ This section does not apply to an act that refers to a prior act itself, and not to the title alone, but to the body and substance of the prior act, or the provisions thereof, and merely extends the time when such provisions shall be effective. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

1936. ✓ Where the provisions of the prior act are not altered in the slightest particular by the later act

referring thereto, and such provisions may be fully ascertained by a reading of the prior act without reference to the referring later, the later act which advises the members of the legislature and the public that all of those provisions in former act are still in full force and effect, but that the effective date thereof is continued for an additional time, this section of the constitution is not violated by the later act. *State ex rel. Berthot v. Gallatin County High School District*, 102 Mont. 356, 58 P. (2d) 264.

1936. ✓ Section 1301.4 is a "reference statute," and as such falls within the rule that statutes which by reference adopt, wholly or partially, pre-existing statutes are not strictly amendatory or revisory in character, and are not obnoxious to the constitution, Art. 5, § 25. *State ex rel. Berthot v. Gallatin County High School District*, 102 Mont. 356, 58 P. (2d) 264.

1936. ✓ This inhibition of the constitution has no application to amendments by implication. *State ex rel. Berthot v. Gallatin County High School District*, 102 Mont. 356, 58 P. (2d) 264.

1936. ✓ The following statement: "This section means that under no possible set of circumstances may a law be revised or amended by reference to its title only, and any act passed in violation of its provisions is absolutely void," contained in *State ex rel. Ford v. Schofield*, 53 Mont. 502, 165 P. 594, 595, explained as obiter dictum. *State ex rel. Berthot v. Gallatin County High School District*, 102 Mont. 356, 58 P. (2d) 264.

Sec. 26.

Note. For law authorizing monthly advancements from salary accounts, payable quarterly under the constitution, see § 442.1 of the political code.

1939. ✓ This section is not violated by the housing law, chapter 404, revised Codes of 1935, which puts persons of low income into a special class to be benefited by slum clearance. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1937. ✓ Section 381 is not invalid as a special act by requiring a bidder to furnish back numbers of the Montana reports, since anyone can do so, although one publisher was better equipped to furnish them because it had the matrices used in printing such reports. *State ex rel. Helena Allied Printing Council v. Mitchell*, 105 Mont. 326, 74 P. (2d) 417.

1937. Cited in *State ex rel. Riley v. District Court*, 103 Mont. 576, 64 P. (2d) 115.

1936. An employee held not entitled to mandamus the industrial board to grant rehearing to decide whether a certain order and decision had ever been served on the petitioner where the supreme court had, on the whole record in a previous proceeding, decided that sufficient service had been made as required by law. *Magelo v. Industrial Accident Board*, 103 Mont. 477, 64 P. (2d) 113.

1936. ✓ Section 1301.6 is not violative of Const. Art. 5, § 26, since a classification according to population is reasonable, and taking the last official census as the basis for such classification provides a reasonable and workable test for inclusion within a class. *State ex rel. Berthot v. Gallatin County High School District*, 102 Mont. 356, 58 P. (2d) 264.

1935. The term "general law," as used in this section, does not necessarily mean a law which operates on all persons or all things pertaining to the subject of the legislation. The word "general" comes from the Latin genus and relates to the whole kind, class, or order; hence a law which affects a class of persons

or things, less than all, may be a general law. *Leuthold v. Brandjord*, 100 Mont. 96, 47 P. (2d) 41.

1935. Laws of 1933, chapter 42, and laws of 1935, chapter 61, which provided for extensions of leases of state lands for grazing purposes, did not violate either constitution, Art. 5, § 26, or Art. 17, § 1. *Leuthold v. Brandjord*, 100 Mont. 96, 47 P. (2d) 41.

1935. ✓ Section 3228.22, exempting barbers from examination, before being granted a license, who were practicing in Montana when the barber act went into effect, while not exempting practicing barbers from other states, held not to violate either the fourteenth amendment of the United States constitution, or the constitution of Montana Art. 3, § 7, or Art. 5, § 26. *State v. Bays*, 100 Mont. 125, 47 P. (2d) 50.

1935. Interdicted class legislation includes all laws that rest upon some false or deficient classification, and the vice in such laws is that they do not embrace all of the class to which they are naturally related. *Leuthold v. Brandjord*, 100 Mont. 96, 47 P. (2d) 41.

1935. A law is general and uniform in its operation when it applies equally to all persons embraced within the class to which it is addressed, provided such classification is made upon some natural, intrinsic, or constitutional distinction between the persons within the class and others not embraced within it, but is not "general," and it makes an important discrimination if it confers particular privileges or imposes peculiar disabilities upon a class of persons arbitrarily selected from a larger number of persons all of whom stand in the same relation to the privileges conferred or the disabilities imposed. *Leuthold v. Brandjord*, 100 Mont. 96, 47 P. (2d) 41.

1935. The care and protection of municipal property is a municipal function within this section. *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624.

Sec. 28.

Note. For law authorizing monthly advancements, from salary accounts, payable quarterly under the constitution, see § 442.1 of the political code.

Sec. 30.

1937. ✓ There is nothing in Const. Art. 5, § 30, which requires contracts for the printing of the supreme court reports to be submitted for approval of the governor and treasurer, since the word "laws," as used in that section, means session laws and not such decisions. *State ex rel. Helena Allied Printing Council v. Mitchell*, 105 Mont. 326, 74 P. (2d) 417.

Sec. 31.

1937. ✓ Under statutes whereby the salaries of county officers are fixed according to the valuation of property in the counties in certain classes, such officers take office subject to the contingency that, by operation of law, their salaries might be reduced or increased, depending on a change in the classification thereof. *State ex rel. Jaumotte v. Zimmerman*, 105 Mont. 464, 73 P. (2d) 548.

1937. ✓ In the absence of specific provisions to the contrary, statutes classifying counties according to assessed valuation of property therein, for the purpose of fixing salaries of officers, operate automatically to place a county in a certain class on the legal ascertainment of the valuation, so that salaries are fixed by a change of such valuation though the county commissioners do not make an order designating the class. *State ex rel. Jaumotte v. Zimmerman*, 105 Mont. 464, 73 P. (2d) 548.

Sec. 32.

1936. ✓ The liquor control act of 1933 is not unconstitutional as violating the constitutional provision that all bills for raising revenue shall originate in the house of representatives; it having originated in the senate. *State v. Driscoll*, 101 Mont. 348, 54 P. (2d) 571.

Sec. 33.

1936. The provisions of sections 103 and 104, initiative ballots, are mandatory, and not directory, and a substantial compliance therewith must be had. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. Initiative ballot on measure to tax stores held defective and not substantially, or at all, meeting the requirements of the law, particularly in that neither the title nor the legend were descriptive of the measure proposed, and that the ballot contained neither the affirmative nor the negative of the proposed measure, and that no opportunity was afforded the voter to express his will as to whether he was in favor of or opposed to the proposed measure. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

Sec. 34.

1939. ✓ The phrase contained in the constitutional provision "appropriations made by law" does not require the introduction of an appropriation bill, the requirement being met by an appropriation sanctioned by law. *State ex rel. Dean v. Brandjord*, Mont., 92 P. (2d) 273.

1939. ✓ Highway debentures act of 1938 (§ 2381.4a et seq.) is not an act relating to an "appropriation" of money within the meaning of Const. Art. 5, §§ 1, 34. *Martin v. State Highway Commissioners*, Mont., 88 P. (2d) 41.

1939. Chapter 404 of the revised codes of 1935, does not violate this section by vesting in the housing authority the power of determining what persons come within the classification of persons of low income, as beneficiaries of the housing law. This determination is not an exercise of a legislative function. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1935. ✓ Cited in *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624, holding sections 173.2 et seq., unconstitutional as to cities and towns.

Sec. 36.

1936. ✓ Sections 1301.1 et seq. do not violate Const. Art. 5, § 36, prohibiting delegation of municipal functions. *State ex rel. Berthot v. Gallatin County High School District*, 102 Mont. 356, 58 P. (2d) 264.

1935. ✓ While cities and towns are municipal corporations, counties and school districts are not, and are not, like the former, within the constitutional provision of Const. Art. 5, § 36, forbidding legislative delegation of power municipal improvements and functions. *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624.

1935. ✓ Sections 173.2 et seq., providing for state insurance of public property, are unconstitutional as regards cities and towns. *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624.

1935. ✓ The care and protection of municipal property is a municipal function within this section. *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624.

1938. ✓ A surety on a bond running to a county who was allowed to substitute his promissory note, at a reduced interest rate, for his liability on the bond could not defend an action on the note brought after the running of the statute of limitations on the bond, as he would not be allowed to say that the note was invalid and unenforceable under this section and thus defeat the very purpose of the section. *Fergus County v. Osweiler*, 107 Mont. 466, 86 P. (2d) 410.

Sec. 39.

1937. ✓ Section 10400.1 (4, 8) is unconstitutional in so far as it attempts retroactively to permit all to deduct federal estate taxes paid, in determining the clear market value of property for state inheritance tax purposes, as applied to undistributed estates of persons dying prior to the operative date of the section. In *re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

1937. ✓ An estate's trustees could not be relieved from the payment of interest on the augmented sum of the state tax which they were required to pay as a result of a decision of the court that federal taxes could not be deducted before the determination of the state tax due. In *re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

1937. ✓ This section is construed to mean only that the tax lien against the land that has reverted to the state, but not the personal obligation to pay the taxes, shall be cancelled by the county treasurer, since the constitution, Art. 5, § 39, prohibits the cancellation of an obligation due the state. *Christofferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

1935. ✓ Laws of 1935, chapter 149, providing for the payment of delinquent taxes by installments without interest, held unconstitutional despite section 6, paragraph 1, of the act, providing that the act should not be construed as a release or postponement of any tax or assessment due, but solely as a method whereby the taxpayer may pay them over a period of time, which itself was held invalid. *State ex rel. DuFresne v. Leslie*, 100 Mont. 449, 50 P. (2d) 959. This act was omitted from R. C. M. 1935.

Sec. 44.

1936. The provisions of sections 103 and 104, initiative ballots, are mandatory, and not directory, and a substantial compliance therewith must be had. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. Initiative ballot on measure to tax stores held defective and not substantially, or at all, meeting the requirements of the law, particularly in that neither the title nor the legend were descriptive of the measure proposed, and that the ballot contained neither the affirmative nor the negative of the proposed measure, and that no opportunity was afforded the voter to express his will as to whether he was in favor of or opposed to the proposed measure. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

ARTICLE VII

Executive Department

Section 1.

1936. The powers and duties vested in state board of education and the superintendent of public instruction, on the one hand, and the local board of school trustees, on the other, are supreme so long as

each body acts within the law in its respective sphere and does nothing arbitrarily or capriciously. *State ex rel. School District No. 29, Flathead County v. Cooney*, 102 Mont. 521, 59 P. (2d) 48.

1936. Since the members of the board of education must serve without compensation it is obvious that the legislature intended to have other state officers and employees assemble the necessary facts and information essential to the exercise of the board's supervision and to base its decisions on. The department of the superintendent of public instruction is the chief source of the detailed information upon which the board must depend. *State ex rel. School District No. 29, Flathead County v. Cooney*, 102 Mont. 521, 59 P. (2d) 48.

1936. The trustees of a local school district cannot mandamus the state board of education to accredit district school as a 3-year high school in the absence of a showing of performance of legal acts preliminary thereto on part of the board of trustees, such as approval of superintendent of public instruction, and demand on the state board. *State ex rel. School District No. 29, Flathead County v. Cooney*, 102 Mont. 521, 59 P. (2d) 48.

Sec. 5.

1937. In proceedings to remove highway commissioners the governor acts not only under the pertinent statute, but also under the constitution, and where acting in his executive capacity he cannot be controlled by the courts, except in case of arbitrary action. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1937. In quo warranto proceedings to determine whether highway commissioners were properly removed by the governor and others appointed in their stead, the supreme court decided that the action of the governor should be upheld, since he was, by law, made the sole arbiter of the controversy, that the decision was his, and that it was unnecessary for the court to weigh, consider, or appraise the testimony heard by him, though the court might have decided the matter differently from the way he decided it. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

Sec. 9.

1935. A provision of a judgment suspending execution of sentence on condition that the defendant leave and remain out of the county held to have no force or effect other than to suspend the sentence; he being thence forward subject to the rules and regulations of the state board of prison commissioners; and, further, that the provision was void as attempted exercise of pardon power which is reposed in the governor and the board of pardons by the constitution, but did not affect the validity of the judgment as to the suspension of sentence or probation. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

Sec. 20.

1937. Cited in *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619, dissenting opinion.

1937. This provision applies to unliquidated claims, and not to those the amounts of which have been fixed specifically by contract or by any department of the government having authority to fix them. *Fitzpatrick v. State Board of Examiners*, 105 Mont. 234, 70 P. (2d) 285.

ARTICLE VIII

Supreme Court

Section 2.

1936. Motion to dismiss application for a writ of supervisory control was overruled where an order of a district judge for the payment of fees of executor for extraordinary services was annulled by another judge of the district on the ground that an action had been instituted in another state for the recovery of the amount, since such action would complicate and delay the settlement of the estate, and waste the estate in needless litigation. *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295.

1936. To attack an allowance of executor's fees for extraordinary services on the ground of inadvertence or fraud, a motion would properly be directed against the decree of settlement of the final account of the executor, rather than against the separate order of the court making the allowance. *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295, holding, also, that such allowance could be reached in the exercise of supervisory control, otherwise only by appeal.

1936. While the writ of supervisory control will ordinarily not be issued when the right of appeal exists, as it is to be used sparingly, the fact that an appeal is available is not conclusive against the writ. *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295.

1936. The issuance of the writ of supervisory control by the supreme court is not restricted either by the constitution or codes. It is in the nature of a summary appeal—a shortcut—to control the course of litigation in the trial court when necessary to prevent a miscarriage of justice, and may be employed to prevent extended and needless litigation. *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295.

1936. The writ of supervisory control is employed to correct error within jurisdiction, independent of either the appellate or original jurisdiction declared by article 8 of the constitution, and is not to be confused with the original writ therein authorized to be issued by the supreme court. *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295.

1936. An application for a writ of supervisory control to review an order of one district judge, of a two-judge district, annulling an order of the other judge who ordered the allowance of extraordinary executor's fees through inadvertence in not ascertaining that proper notice of the hearing for the fees had not been given to a coexecutor and residuary legatee, was dismissed in *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295.

Sec. 3.

1936. In a proceeding by the attorney general by quo warranto to oust a state senator from the office of relief commissioner under Chapter 109 of the Laws of 1935, the supreme court was only interested in ascertaining if the act was in accordance with the powers and restrictions conferred and reposed by the people themselves, by the terms of the constitution; holding that it is only when acts are clearly without and in contravention of such powers that the court will move to nullify them. *State ex rel. Nagle v. Kelsey*, 102 Mont. 8, 55 P. (2d) 685.

1935. Laws of 1935, chapter 149, providing for the payment of delinquent taxes by installments without

interest, held unconstitutional despite section 6, paragraph 1, of the act, providing that the act should not be construed as a release or postponement of any tax or assessment due, but solely as a method whereby the taxpayer may pay them over a period of time, which itself was held invalid. *State ex rel. DuFresne v. Leslie*, 100 Mont. 449, 50 P. (2d) 959. This act was omitted from R. C. M. 1935.

1936. ✓ Public and private rights may be involved in the same case, and in protecting the public rights, private rights may incidentally be protected and enforced; yet the rights of the public—that is, of the state—must be the paramount and moving consideration on the question of whether the supreme court has original jurisdiction to issue injunctions. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. ✓ An operator of licensed chain stores in state could maintain injunction suit to restrain secretary of state from certifying to county clerks, and the clerks from distributing to voters an invalid ballot on an initiative measure to tax chain stores, though store operator failed to allege that it was a taxpayer, since payment of license showed it was a taxpayer and the matter was one of vital public interest. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. ✓ Where an initiative ballot proposed to be submitted to the voters was prepared in disregard of statutory requirements, the supreme court had original jurisdiction to issue an injunction restraining the secretary of state from certifying the measure to county clerks, and the clerks from distributing copies thereof, since the matter was one of vital public interest involving the liberties of the people of the state. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. ✓ After the supreme court had assumed jurisdiction and issued an order to show cause why the secretary of state should not be restrained from certifying an initiative measure to be submitted to the electorate, it was too late to contend that there was plenty of time for the petitioner to have discovered the insufficiency of the petitions and to have a hearing in the district court and have the decision of that court reviewed before the time of the proposed election. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

1936. ✓ The supreme court has jurisdiction of an original proceeding in quo warranto brought by the attorney general on behalf of the state for the purpose of ousting an incumbent from office. *State ex rel. Nagle v. Kelsey*, 102 Mont. 8, 55 P. (2d) 685.

1936. ✓ In quo warranto by the attorney general to oust an incumbent from office it is not necessary that the pleadings set forth the name of any other claimant to the office, nor that it be shown that any one else is entitled to the office. *State ex rel. Nagle v. Kelsey*, 102 Mont. 8, 55 P. (2d) 685.

1935. ✓ The constitution vests in the courts the exclusive power to construe and interpret legislative acts, as well as provisions of the constitution. *State ex rel. DuFresne v. Leslie*, 100 Mont. 449, 50 P. (2d) 959.

District Courts

Section 11.

1939. ✓ When exercising jurisdiction in matters of probate district court is a court of record, exercising general jurisdiction as such. Adoption proceedings, if they do not constitute matters of probate,

clearly fall within the clause "all such special actions and proceedings as are not otherwise provided for," within the meaning of the constitution, and the court, when acting in adoption proceedings, is exercising jurisdiction as a court of record and not as a court of limited jurisdiction. In *re Hoermann's Estate. Liptak v. Yule*, Mont., 91 P. (2d) 394.

1936. ✓ The district court, sitting as a probate court, had jurisdiction to ascertain and determine not only the heirs and individuals who might take by succession or will, but also the rights of all other individuals who should claim a right by virtue of assignment. In *re Baxter's Estate*, 101 Mont. 504, 54 P. (2d) 869.

1936. ✓ The district court, when sitting as a probate court, is not limited by the restrictions of the former probate court, but has plenary powers in matters of probate and heirship. In *re Baxter's Estate*, 101 Mont. 504, 54 P. (2d) 869.

1935. ✓ Under the constitution of the state, the district court has original jurisdiction in all cases at law and in equity and of all matters of probate. This language has been transported totidem verbis into section 8829, R. C. M. 1921. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

1935. ✓ The district court has jurisdiction of all public offenses not otherwise provided for, and, therefore, has jurisdiction of misdemeanors only in exceptional cases, and, unless a law specifically provides that the court shall have jurisdiction in cases of its violation or fixes the penalty above the maximum jurisdiction of the justices' courts, cases of violation fall within the exclusive jurisdiction of the latter courts. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

1935. ✓ Discretion is vested in the legislature to confer jurisdiction in misdemeanor cases on either the district court or the justice's court. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

Justices of the Peace

Section 21.

1939. ✓ The provision of section 21 of article 8 of the constitution, conferring on the justice court jurisdiction to try cases of forcible entry and unlawful detainer, is not limited by the provision that the court shall not have jurisdiction in any case involving title or right of possession of real property, and the court may try such actions even if the right of possession is material and presented by the pleadings. *State ex rel. Hamshaw v. Justice's Court*, Mont., 88 P. (2d) 1.

1939. ✓ Section 21 of article 8 of the constitution comprehends forcible detainer actions as well as those for forcible entry and unlawful detainer, in defining the jurisdiction of the justice court. *State ex rel. Hamshaw v. Justice's Court*, Mont., 88 P. (2d) 1.

1935. ✓ Discretion is vested in the legislature to confer jurisdiction in misdemeanor cases on either the district court or the justice's court. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

1935. ✓ The district court has jurisdiction of all public offenses not otherwise provided for, and, therefore, has jurisdiction of misdemeanors only in exceptional cases, and, unless a law specifically provides that the court shall have jurisdiction in cases of its violation or fixes the penalty above the maximum jurisdiction of the justices' courts, cases of violation fall within the exclusive jurisdiction of the latter

courts. Ex parte Sheehan, 100 Mont. 244, 49 P. (2d) 438.

Sec. 23.

1936. Where a statute is so framed as to deny the right of appeal in certain instances, the statute is invalid as to an aggrieved litigant who is thereby denied an appeal. Davis v. Bell Boy Gold Mining Co., 101 Mont. 534, 54 P. (2d) 563.

1936. Section 9754 is a statute of limitations, and unless the appeal is taken within the time prescribed, the appellate court acquires no jurisdiction and the appeal must be dismissed. Davis v. Bell Boy Gold Mining Co., 101 Mont. 534, 54 P. (2d) 563.

1936. The district court can acquire no jurisdiction by appeal until the lower court has acted, and cannot try the case de novo unless it determines that the lower court abused its discretion in refusing to set aside the judgment on the showing made in support of the motion. Davis v. Bell Boy Gold Mining Co., 101 Mont. 534, 54 P. (2d) 563.

Miscellaneous Provisions

Section 27.

1936. Memorandum of costs must be filed and served within five days from date of notice of decision on application for writ of supervisory control in supreme court rather than within that time from issuance of writ, and motion to strike memorandum not so filed and served was granted in State ex rel. Clark v. District Court, 103 Mont. 145, 61 P. (2d) 836.

Sec. 28.

1936. Cited in Merchants Fire Assurance Corporation, 104 Mont. 1, 64 P. (2d) 617.

Sec. 30.

1936. Section 378 was not repealed by section 8796 or any other statute. Tipton v. Sands, 103 Mont. 1, 60 P. (2d) 662.

1936. Section 378 does not violate Const. Art. 8, § 30. Tipton v. Sands, 103 Mont. 1, 60 P. (2d) 662.

1936. A candidate for office of chief justice of supreme court stating in good faith to voters that he believed section 378 unconstitutional and that, if elected to the office, would not accept compensation for reporting cases, did not violate corrupt practices act. Tipton v. Sands, 103 Mont. 1, 60 P. (2d) 662.

Sec. 32.

1937. There is nothing in Const. Art. 5, § 30, which requires contracts for the printing of the supreme court reports to be submitted for approval of the governor and treasurer, since the word "laws," as used in that section, means session laws and not such decisions. State ex rel. Helena Allied Printing Council v. Mitchell, 105 Mont. 326, 74 P. (2d) 417.

Sec. 35.

1936. A candidate for office of chief justice of supreme court stating in good faith to voters that he believed section 378 unconstitutional and that, if elected to the office, would not accept compensation for reporting cases, did not violate corrupt practices act. Tipton v. Sands, 103 Mont. 1, 60 P. (2d) 662.

1936. Section 378 does not violate Const. Art. 8, § 35. Tipton v. Sands, 103 Mont. 1, 60 P. (2d) 662.

1936. The office of supreme court reporter is not an office within the meaning of Const. Art. 8, § 35,

in that it does not possess a delegation of a portion of the sovereign power of the government to be exercised for the benefit of the public. Tipton v. Sands, 103 Mont. 1, 60 P. (2d) 662.

ARTICLE IX

Rights of Suffrage and Qualifications to Hold Office

Section 2.

1939. In absence of showing that if initiative measure had been submitted to taxpayers only it would have been defeated, measure was not invalidated by fact that some of the voters were disqualified to vote. Martin v. State Highway Commissioners, Mont., 88 P. (2d) 41.

Sec. 9.

1937. The phrase "registered vote," in section 1622.1, means voters who were registered and entitled to vote at the last general election, as distinguishable from voters who actually voted thereat. State ex rel. Durland v. Board of County Commissioners, 104 Mont. 21, 64 P. (2d) 1060.

1936. This section gives the legislature power to pass such laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise. Tipton v. Sands, 103 Mont. 1, 60 P. (2d) 662.

1936. Corrupt practices act is not violative of constitution. Tipton v. Sands, 103 Mont. 1, 60 P. (2d) 662.

ARTICLE X

State Institutions and Public Buildings

Section 5.

1939. The cost of caring for the poor is primarily an obligation of the counties, and the county may maintain an employment office and manager to conserve the poor fund and charge the cost of such office to the poor fund. State ex rel. Barr v. District Court and for Lake Co., Mont., 91 P. (2d) 399.

1938. This section was not violated by the water conservation board by the issuance of revenue bonds to take up relief emergency warrants issued by a county to raise funds for the construction of a reservoir to store and furnish water for the irrigation of lands of stockholders of a water users' association where the bonds were secured solely by such waterworks and revenue derived from the operation thereof. Kraus v. Riley, 107 Mont. 116, 80 P. (2d) 864.

1938. The words "as may be prescribed by law" mean as may be prescribed by act of the legislature. State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305.

1938. Cited in State ex rel. Broadwater County v. Potter et al., 107 Mont. 284, 84 P. (2d) 796, holding that the state board of public welfare is acting as an agent of the county in cooperating with it under the Public Welfare Law, § 395A.1, et seq., in discharging an obligation primarily the county's in relieving the condition of the poor.

ARTICLE XI

Education

Section 1.

1938. Const. Art. 11, sections 1 and 6, are a solemn mandate to the legislature for the purpose of insur-

ing to the people of the state the system described therein. State ex rel. Lien v. School Dist. No. 73 of Stillwater County, 106 Mont. 223, 76 P. (2d) 330.

Sec. 2.

1937. ✓ In an action by an irrigation district against the state, the state board of land commissioners, and the county treasurer of the county in which the district was situated, to have certain levies of irrigation assessments declared valid liens upon lands owned by the state, in the district, and that the district have a right to collect such assessments from the state, it was held that the plaintiff had such right, and that the permanent school fund, from which money was loaned on first mortgage on lands which later were incorporated into the district, was not reduced illegally in violation of the constitution making such fund inviolate. Toole County Irrigation District v. State, 104 Mont. 420, 67 P. (2d) 989.

Sec. 3.

1939. ✓ Cited in Lodge v. Ayers, Governor, et al., Mont., 91 P. (2d) 691.

1937. ✓ In an action by an irrigation district against the state, the state board of land commissioners, and the county treasurer of the county in which the district was situated, to have certain levies of irrigation assessments declared valid liens upon lands owned by the state, in the district, and that the district have a right to collect such assessments from the state, it was held that the plaintiff had such right, and that the permanent school fund, from which money was loaned on first mortgage on lands which later were incorporated into the district, was not reduced illegally in violation of the constitution making such fund inviolate. Toole County Irrigation District v. State, 104 Mont. 420, 67 P. (2d) 989.

Sec. 4.

1936. The trustees of a local school district cannot mandamus the state board of education to accredit district school as a 3-year high school in the absence of a showing of performance of legal acts preliminary thereto on part of the board of trustees, such as approval of superintendent of public instruction, and demand on the state board. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

✓ 1935. Cited in State ex rel. City of Missoula v. Holmes, 100 Mont. 256, 47 P. (2d) 624, holding sections 173.2 et seq., unconstitutional as to cities and towns.

1935. ✓ Laws of 1935, chapter 61, §§ 1, 2, providing for extensions of leases of state lands, did not violate Const. Art. 11, § 4, vesting control over state lands in state land board. Leuthold v. Brandjord, 100 Mont. 96, 47 P. (2d) 41.

1935. ✓ The legislature must act as a body and within its constitutional powers, and it cannot under the guise of a regulation divest the state land board of its constitutional power to control and manage the state lands, but it may by regulation fix the asking price for noncompetitive leases, and fixing the term a lease shall run, within the constitutional limit of five years. Leuthold v. Brandjord, 100 Mont. 96, 47 P. (2d) 41.

Sec. 6.

1938. ✓ Const. Art. 11, sections 1 and 6, are a solemn mandate to the legislature for the purpose of insuring to the people of the state the system described therein. State ex rel. Lien v. School Dist. No. 73 of Stillwater County, 106 Mont. 223, 76 P. (2d) 330.

Sec. 11.

1939. ✓ The regulations adopted by the board of education relating to the tenure of office of college professors and instructors were clearly within its authority under the constitution. State ex rel. Keeney v. Ayers, Governor, et al., Mont., 92 P. (2d) 307.

1939. ✓ The regulations of the state board of education made within its jurisdiction have the force of law, and become part of the contracts made thereunder to the same effect. State ex rel. Keeney v. Ayers, Governor, et al., Mont., 92 P. (2d) 307.

1936. ✓ Both the state board of education and the superintendent of public instruction and the local boards of school trustees are quasijudicial bodies or officials, and both exercise discretionary powers, and when such powers are exercised in the manner prescribed by law, no right of review exists. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Constitution Art. 11, § 11, vests in the state board of education general control over and supervision of all state educational matters, including district and high schools. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The state board of education is a part of the executive department of the state government. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The board of education is one of the governmental agencies of the state. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

1936. ✓ This provision merely vests control over the state educational institutions in the board of education and authorizes the legislature to define and circumscribe the powers and duties of the board. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

1936. ✓ The powers and duties vested in state board of education and the superintendent of public instruction, on the one hand, and the local board of school trustees, on the other, are supreme so long as each body acts within the law in its respective sphere and does nothing arbitrarily or capriciously. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Since the members of the board of education must serve without compensation it is obvious that the legislature intended to have other state officers and employees assemble the necessary facts and information essential to the exercise of the board's supervision and to base its decisions on. The department of the superintendent of public instruction is the chief source of the detailed information upon which the board must depend. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The trustees of a local school district cannot mandamus the state board of education to accredit district school as a 3-year high school in the absence of a showing of performance of legal acts preliminary thereto on part of the board of trustees, such as approval of superintendent of public instruction, and demand on the state board. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The board of education is authorized, without approval of electors, to borrow funds from the fed-

eral government to erect a chemistry-pharmacy building in connection with the Montana state university at Missoula under laws of extraordinary session 1933-34, chapter 24, as amended by chapter 36 of the same session and to issue bonds pledging the income and interest from the university land grant contained in section 14 of the enabling act. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

Sec. 12.

1939. Cited in *Lodge v. Ayers, Governor, et al.*, Mont., 91 P. (2d) 691.

1937. In an action by an irrigation district against the state, the state board of land commissioners, and the county treasurer of the county in which the district was situated, to have certain levies of irrigation assessments declared valid liens upon lands owned by the state, in the district, and that the district have a right to collect such assessments from the state, it was held that the plaintiff had such right, and that the permanent school fund, from which money was loaned on first mortgage on lands which later were incorporated into the district, was not reduced illegally in violation of the constitution making such fund inviolate. Toole County Irrigation District v. State, 104 Mont. 420, 67 P. (2d) 989.

1936. Under sections 877.6 et seq. the board of education had the power to borrow money for the erection of a journalism building at the state university and to pledge therefor the income and interest from the university land grant fund. State ex rel. Wilson v. State Board of Education, 102 Mont. 165, 56 P. (2d) 1079.

ARTICLE XII

Revenue and Taxation

Section 1.

1938. Reservations over which the United States is exercising exclusive jurisdiction, although within the geographical limits of a state, are not within the taxing jurisdiction of the state. State ex rel. Board of Com'rs of Valley County v. Bruce, 106 Mont. 322, 77 P. (2d) 403.

1938. All property within the state is subject to taxation unless it is included within some of the exemptions mentioned in article 12, section 2, as provided by section 1 of the same article. Henderson v. City of Missoula, 106 Mont. 596, 79 P. (2d) 547.

1938. The Montana constitution is a limitation upon the powers of the legislature of the state, and not a grant unto it. State ex rel. Board of Com'rs of Valley County v. Bruce, 106 Mont. 322, 77 P. (2d) 403.

1938. The constitutional requirement of levy of uniform taxes throughout the state is not violated by R. C. M. 1935, § 25, in ceding exclusive jurisdiction over land purchased by the federal government for purposes set forth in the constitution without reserving power to the state to tax personal property within such lands. State ex rel. Board of Com'rs of Valley County v. Bruce, 106 Mont. 322, 77 P. (2d) 403.

1937. A license tax imposed for the privilege of doing business in Montana is not subject to the uniformity provisions of the constitution. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995.

1937. A statute which imposes on all individuals of a class the same amount of license tax exemption, and the same rate of taxation on gross receipts above

the exemption, does not violate the uniformity provisions of the constitution. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995.

1937. The legislature may impose a license tax on certain occupations and not on others, and, though arbitrary and unreasonable classifications are not permissible, they are not arbitrary or unreasonable unless they preclude the assumption that they were made in the exercise of legislative judgment and discretion. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995.

1937. Section 2439.5 held not violative of the equal protection and due process clauses of the state and federal constitutions. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995.

1937. The owner of a single movie theater cannot, in a proceeding to enjoin the enforcement of sections 2439.1 et seq., on the ground that the method of taxation is arbitrary and unreasonable as against owners of chain theaters, under the rule that only those adversely affected by an alleged discriminatory act will be heard to question its validity. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995.

1937. One challenging the classification of a statute on the ground that it is arbitrary and unreasonable has the burden of so proving. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995.

1937. A statute which groups movie theaters in a class by themselves and apart from other forms of entertainment, such as vaudeville theaters, for the purpose of imposing license taxes, does not make an arbitrary classification in the absence of a showing that there are any exclusively vaudeville theaters in the state, and if so they are taxed under another statute. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995, since there exists such a substantial difference between the two classes as to justify classification in different categories.

1937. The courts will not interfere with the legislative method of arriving at the amount of a tax if it is not unreasonably discriminatory. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995.

1936. The maxim "inclusio unius est exclusio alterius," being only a rule of interpretation and not a constitutional command, held that the two methods of taxation mentioned or provided for in section 1 of article 12 of the constitution are not exclusive, and that the legislature has the power to adopt other methods of taxation which are not prohibited by some other section of the constitution. State v. Driscoll, 101 Mont. 348, 54 P. (2d) 571.

1936. The liquor control act of 1933 held not unconstitutional as providing for the support of the state by other means than property taxation or license tax. State v. Driscoll, 101 Mont. 348, 54 P. (2d) 571.

Sec. 2.

1939. The property of the housing authority is exempt from state and local taxation because it is public property. Rutherford v. City of Great Falls, 107 Mont. 512, 86 P. (2d) 656.

1939. This provision is mandatory in character, is self-executing, and legislation thereafter enacted declaring such property exempt from taxation could add nothing to its force and effectiveness. Rutherford v. City of Great Falls, 107 Mont. 512, 86 P. (2d) 656.

1939. The legislature can authorize state land not used for governmental purposes, and which is leased to individuals for agricultural use, to be included

within special improvement districts, or drainage districts, and authorize assessments to the extent that the land is benefited. Such assessments are not taxes within the meaning of the constitutional and statutory prohibitions. *State ex rel. Freebourn v. Yellowstone County*, Mont., 88 P. (2d) 6.

1938. ✓ Where there was a debatable question, under the statutes of the United States, as to whether the title to funds paid to a guardian of an incompetent veteran by the federal government remained in it, the state legislature had power to enact a law settling the question for this jurisdiction. *Henderson v. City of Missoula*, 106 Mont. 596, 79 P. (2d) 547.

1938. ✓ The provision in section 1998 that title to federal funds paid to the guardian of veteran incompetent remains in the United States, and is not subject to taxation until such title passes to the veteran in his own right, is constitutional. *Henderson v. City of Missoula*, 106 Mont. 596, 79 P. (2d) 547.

1938. ✓ The constitutional requirement of levy of uniform taxes throughout the state is not violated by R. C. M. 1935, § 25, in ceding exclusive jurisdiction over land purchased by the federal government for purposes set forth in the constitution without reserving power to the state to tax personal property within such lands. *State ex rel. Board of Com'rs of Valley County v. Bruce*, 106 Mont. 322, 77 P. (2d) 403.

1938. ✓ The Montana constitution is a limitation upon the powers of the legislature of the state, and not a grant unto it. *State ex rel. Board of Com'rs of Valley County v. Bruce*, 106 Mont. 322, 77 P. (2d) 403.

1938. ✓ Reservations over which the United States is exercising exclusive jurisdiction, although within the geographical limits of a state, are not within the taxing jurisdiction of the state. *State ex rel. Board of Com'rs of Valley County v. Bruce*, 106 Mont. 322, 77 P. (2d) 403.

1937. ✓ Between the issuance of a certificate of purchase of state lands and the cancellation of the certificate for delinquency of payments the interest of the purchaser in such lands was taxable, but after cancellation the purchaser's interest and the tax lien thereon were extinguished. *Christofferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

1936. ✓ Where, in allotting lands to individual Indians, the trust patents reserved oil and gas for the benefit of the tribe, such lands were subject to the state gross production tax, operators' net proceeds tax, and royalty owners' net proceeds tax on oil produced from such lands, under federal statute approved Feb. 28, 1891, section 3, 26 Stat. 795, giving state the right to tax oil produced on unallotted Indian lands, for as to the oil rights they were unallotted. *Santa Rita Oil & Gas Co. v. Board of Equalization*, 101 Mont. 268, 54 P. (2d) 117.

Sec. 3.

1935. Proportion of market value of oil produced, payable as royalty to non-resident royalty owner, who had no property interest in the realty, held part of "net proceeds" within Const. Art. 12, § 3. *Forbes v. Mid-Northern Oil Co.*, 100 Mont. 10, 45 P. (2d) 673.

Sec. 4.

1938. ✓ Objection that if counties may be compelled by the legislature to pay relief claimants by warrant or check, then this amounts to a levy of taxes by the legislature for a county purpose, contrary to

Const. Art. 12, § 4, held untenable where there is no direct tax attempted to be levied by the legislature. *State ex rel. Wilson*, 106 Mont. 526, 79 P. (2) 305.

1938. ✓ This section is not violated by § 335.17-2 or § 335.17-4, or any other part of the act, because it does not levy a tax. It simply authorizes the political subdivision issuing relief warrants to do so and fix the maximum rate. The amount of the levy is left with the local authorities, as is also the question of whether any warrants will be issued necessitating any levy. *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

1937. ✓ Cited in *Northern Pacific Ry. Co. v. Lutey*, 104 Mont. 321, 66 P. (2d) 785.

1936. ✓ Section 5108.16, prescribing minimum wages for policemen in cities of the first class does not violate constitution, article 12, section 4, prohibiting legislature from levying taxes for municipalities. *State ex rel. Gebhardt v. City Council of Helena*, 102 Mont. 27, 55 P. (2d) 671.

1936. ✓ The purpose of this section was to secure to the people of municipalities that measure of local self-government which they enjoyed at the time the constitution was framed and adopted. *State ex rel. Gebhardt v. City Council of Helena*, 102 Mont. 27, 55 P. (2d) 671.

Sec. 10.

1937. ✓ Where, after the defeat on referendum of the state insurance law of 1935, R. C. M. 1935, Ch. 179, unearned premiums on state reinsurance contracts, §§ 173.10, 173.12, were retained by the insurance company to apply on other contracts of insurance, Const. Art. 12, § 10, was not violated by such procedure, since it was a mere matter of bookkeeping and no money was paid out of the state treasury. *Fitzpatrick v. State Board of Examiners*, 105 Mont. 234, 70 P. (2d) 285, nor was Const. Art. 13, § 1, violated by the state retaining unearned premiums paid by counties and school districts, since the section does not prohibit donations to the state, nor loaning of credit to the state. Only the legislature, and not the courts, could reimburse such political units for the premiums paid.

Sec. 11.

1939. ✓ An objection to the issuance of county bonds to fund county road fund warrants, on the ground that they would be an obligation against city property, held not tenable as the legislature could authorize a levy against county and city property for such purpose without violating the constitution. *State ex rel. Siegfried v. Carbon County et al.*, Mont., 92 P. (2d) 301.

1938. ✓ Reservations over which the United States is exercising exclusive jurisdiction, although within the geographical limits of a state, are not within the taxing jurisdiction of the state. *State ex rel. Board of Com'rs of Valley County v. Bruce*, 106 Mont. 322, 77 P. (2d) 403.

1938. ✓ The Montana constitution is a limitation upon the powers of the legislature of the state, and not a grant unto it. *State ex rel. Board of Com'rs of Valley County v. Bruce*, 106 Mont. 322, 77 P. (2d) 403.

1938. ✓ The constitutional requirement of levy of uniform taxes throughout the state is not violated by R. C. M. 1935, § 25, in ceding exclusive jurisdiction over land purchased by the federal government for purposes set forth in the constitution without reserving power to the state to tax personal property

within such lands. State ex rel. Board of Com'rs of Valley County v. Bruce, 106 Mont. 322, 77 P. (2d) 403.

1937. ✓ A statute which imposes on all individuals of a class the same amount of license tax exemption, and the same rate of taxation on gross receipts above the exemption, does not violate the uniformity provisions of the constitution. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995.

1937. ✓ A license tax imposed for the privilege of doing business in Montana is not subject to the uniformity provisions of the constitution. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995.

1937. ✓ The legislature may impose a license tax on certain occupations and not on others, and, though arbitrary and unreasonable classifications are not permissible, they are not arbitrary or unreasonable unless they preclude the assumption that they were made in the exercise of legislative judgment and discretion. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995.

1937. ✓ The owner of a single movie theater cannot, in a proceeding to enjoin the enforcement of sections 2439.1 et seq., on the ground that the method of taxation is arbitrary and unreasonable as against owners of chain theaters, under the rule that only those adversely affected by an alleged discriminatory act will be heard to question its validity. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995.

1937. ✓ One challenging the classification of a statute on the ground that it is arbitrary and unreasonable has the burden of so proving. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995.

1937. ✓ A statute which groups movie theaters in a class by themselves and apart from other forms of entertainment, such as vaudeville theaters, for the purpose of imposing license taxes, does not make an arbitrary classification in the absence of a showing that there are any exclusively vaudeville theaters in the state, and if so they are taxed under another statute. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995, since there exists such a substantial difference between the two classes as to justify classification in different categories.

1937. ✓ The objection that discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., a new motor vehicle, bought on December 31 is assessable the next day, whereas one purchased on the 2d day of January following is not taxable until the following year, held untenable, since no exemption from taxation results, but the tax is simply shifted from one taxpayer to another. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. ✓ The objection that discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., taxes on motor vehicles are assessable as of January 1st, whereas other personal property is assessed for the purpose of taxation as of noon the first Monday of March, is untenable, since the legislature may fix different dates for assessment of different classes of property, and motor vehicles are in a class different from other personal property. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. ✓ The objection that unlawful discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., a different method is used for enforcing payment of taxes on motor vehicles from that used in cases of other classes of personal property, in that the motor vehicle may not be used on

the highways until the tax is paid and license cannot be secured for such operation until the tax is paid, and that if the vehicle is operated without a license the operator has committed a misdemeanor, held untenable, since the collection of taxes in an unusual way on account of the kind of property does not violate the uniformity provision of the constitution, but it is the levy or assessment of the tax which must be uniform, and not the means of enforcement. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. ✓ The objection that unlawful discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., double assessment and taxation is authorized, once while the motor vehicle is in the hands of the dealer and once in the same year while in the hands of the purchaser, was held untenable, because it is the duty of the county treasurer, where there is a double assessment for the same year, to collect only the tax justly due and make return of the facts under affidavit to the county clerk, and if the tax has not been paid by the dealer the obligation of the purchaser to pay it will be adjusted in the purchase price. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. ✓ The ease with which motor vehicles may be removed from the taxing district as compared with most other personal property is a sufficient reason for special treatment at the hands of the legislature, and the difference in the case of the dealer in motor vehicles and that involving individuals likewise justifies the difference in the rate, for the dealer buys a motor vehicle, sells, and purchases another, which he in turn sells; as the capital invested yields several distinct profits during the year, while in the hands of an individual little or no profit may be realized from the investment. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. ✓ The objection that unlawful discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., the amount of taxes on motor vehicles is to be computed and determined on the basis of the levy of the year preceding the current year of application for registration, while taxes for a particular year on all personal property except motor vehicles shall be paid at the rates levied for that year, and that such vehicles in the hands of dealers must pay taxes at the same rate, held untenable, since the law does not provide that the taxes are to be "levied or assessed," but that they are to be "computed and determined" on the basis of the levy of the year preceding. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. ✓ The courts will not interfere with the legislative method of arriving at the amount of a tax if it is not unreasonably discriminatory. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995.

1936. ✓ Cited in *Ford Motor Co. v. Linnane*, 102 Mont. 325, 57 P. (2d) 803.

Sec. 12.

1939. ✓ Highway debentures act of 1938 (§ 2381.4a) does not violate Const. Art. 12, § 12. *Martin v. State Highway Commissioners*, Mont., 88 P. (2d) 41.

1938. ✓ The last sentence in this section is cited in State ex rel. *Browning v. Brandjord*, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677.

Sec. 15.

1938. ✓ Where on an application for a writ of mandamus by the state board of equalization against a county clerk to compel compliance with an order of the board to reduce an assessment, it was contended that the land in question was misdescribed in the notice of appeal to the board, it was held that in the absence of proof that the notice had not been amended, the court would presume that the proceedings leading up to the order were regular. *State ex rel. State Board of Equalization v. Jacobson*, 107 Mont. 461, 86 P. (2d) 9.

1938. ✓ Under this section the state board of equalization exercises supervisory power over the acts of county assessors and county boards of equalization, and has the power to increase or decrease valuations made by them. *State ex rel. State Board of Equalization v. Jacobson*, 107 Mont. 461, 86 P. (2d) 9.

1937. Cited in *Northern Pacific Ry. Co. v. Lutey*, 104 Mont. 321, 66 P. (2d) 785.

Sec. 16.

1936. Cited in *Ford Motor Co. v. Linnane*, 102 Mont. 325, 57 P. (2d) 803.

ARTICLE XIII

Public Indebtedness

Section 1.

1939. ✓ This section is not violated by chapter 404 of the Rev. Codes of 1935, the housing cooperation law and the housing authorities law, chapters 138 and 140 of the Laws of 1935. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1938. ✓ This section was not violated by the water conservation board by the issuance of revenue bonds to take up relief emergency warrants issued by a county to raise funds for the construction of a reservoir to store and furnish water for the irrigation of lands of stockholders of a water users' association where the bonds were secured solely by such waterworks and revenue derived from the operation thereof. *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

1938. ✓ An agreement by the state board of land commissioners pooling school lands with those of private owners, under a unit operation plan, wherein it was provided that land owners could use gratis what gas they needed for domestic purposes did not violate the enabling act, the constitution, or statutory provisions, since such provision were rightly considered in determining what the market value of the interest of the state was at the time the agreement was made. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1937. ✓ Where, after the defeat on referendum of the state insurance law of 1935, R. C. M. 1935, Ch. 179, unearned premiums on state reinsurance contracts, 173.10, 173.12, were retained by the insurance company to apply on other contracts of insurance, Const. Art. 12, § 10, was not violated by such procedure, since it was a mere matter of bookkeeping and no money was paid out of the state treasury, *Fitzpatrick v. State Board of Examiners*, 105 Mont. 234, 70 P. (2d) 285, nor was Const. Art. 13, § 1, violated by the state retaining unearned premiums paid by counties and school districts, since the section does not prohibit donations to the state, nor loaning of credit to the state. Only the legislature, and not the courts, could reimburse such political units for the premiums paid.

1936. ✓ This section does not prohibit holding a city liable to a holder of improvement district warrant where funds were exhausted by second payment of a warrant by the city treasurer, since as liability was predicated on negligence of treasurer, the city was liable as trustee. *Blackford v. City of Libby*, 103 Mont. 272, 62 P. (2d) 216.

1935. ✓ Cited in *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624, holding sections 173.2 et seq., unconstitutional as to cities and towns.

Sec. 2.

1939. ✓ This section is not violated by chapter 404 of the Rev. Codes of 1935, the housing cooperation law and the housing authorities law, chapters 138 and 140 of the Laws of 1935. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1939. ✓ Highway debentures act of 1938 (§ 2381.4a et seq.,) does not violate the provision of Const. Art. 13, § 2, in regard to levying of tax sufficient to pay interest and principal within time limited by law. *Martin v. State Highway Commissioners*, Mont., 88 P. (2d) 41.

1939. ✓ The issuance of bonds to pay outstanding obligations does not create a debt within the meaning of the constitution. *Lodge v. Ayers, Governor, et al.*, Mont., 91 P. (2d) 691.

Sec. 4.

1939. ✓ This section is not violated by chapter 404 of the Rev. Codes of 1935, the housing Cooperation law and the housing authorities law, chapters 138 and 140 of the Laws of 1935. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1938. ✓ This section was not violated by the water conservation board by the issuance of revenue bonds to take up relief emergency warrants issued by a county to raise funds for the construction of a reservoir to store and furnish water for the irrigation of lands of stockholders of a water users' association where the bonds were secured solely by such waterworks and revenue derived from the operation thereof. *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

Sec. 5.

1935. ✓ Laws of 1935, chapter 99, section 3, validated bond election where ballot was not in form prescribed exactly by statute, where it was sufficient to advise the electorate of what grant of authority the county board asked at their hands. *Church v. Lincoln County*, 100 Mont. 238, 46 P. (2d) 681.

Sec. 6.

1939. ✓ This section is not violated by chapter 404 of the Rev. Codes of 1935, the housing cooperation law and the housing authorities law, chapters 138 and 140 of the Laws of 1935. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1935. ✓ City may contract with the water conservation board for a supply of water though the contract would run for 30 years, since any legal body, such as the city council of a municipality, is a continuing body, and the members thereof act as a board and not as individuals. *Farmers State Bank of Conrad v. City of Conrad*, 100 Mont. 415, 47 P. (2d) 853.

1935. ✓ The powers granted a city by the legislature to contract for and procure a water supply are plenary and unlimited save by the duty to exercise them with reasonable discretion. *Farmers State Bank of Conrad v. City of Conrad*, 100 Mont. 415, 47 P. (2d) 853.

1933. ✓ A city may contract with a water conservation board for a water supply where the net revenue from so doing would be greater than that from operating its own existing system; "revenue," as used in article 13, section 6 of the constitution meaning "net revenue." *Farmers State Bank of Conrad v. City of Conrad*, 100 Mont. 415, 47 P. (2d) 853, holding, also, that a bond holder who bought bonds for the construction of the city water system could not enjoin the city from entering into such contract, since the city's net revenue would be increased thereby.

1935. ✓ This section is not violated where special fund dedicated to payment of indebtedness is alone liable therefor, such as revenue from plan to buy water from water conservation board, or where property is purchased for improvement of existing plant and revenue from entire plant is set aside for payment of purchase price of improvement. *Farmers State Bank of Conrad v. City of Conrad*, 100 Mont. 415, 47 P. (2d) 853.

ARTICLE XV

Corporations Other Than Municipal

Section 9.

1939. ✓ Housing projects, being for a public use, granting to the housing authority the right of eminent domain did not violate this section. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

Sec. 11.

1938. ✓ The purpose of Const. Art. 15, § 11, "is to prevent granting to foreign corporations any rights or immunities not enjoyed by corporations of the same or similar kind created under the laws of and doing business in this state," and does not apply to an insurance company of a foreign state whose statutes do not place a heavier burden on Montana corporations doing business in that state, than Montana places on corporations of that state doing business in Montana. *Occidental Life Ins. Co. v. Holmes*, 107 Mont. 48, 80 P. (2d) 383.

1936. ✓ Cited in *Ford Motor Co. v. Linnane*, 102 Mont. 325, 57 P. (2d) 803.

1935. ✓ Plaintiff secured a judgment in Iowa against defendant, a New York corporation. Subsequent to this judgment but also subsequent to the dissolution of the corporation in New York, plaintiff instituted a suit in Montana attaching personal property therein of the defendant foreign corporation. It was held that a local creditor may protect himself by attachment before the foreign liquidator has taken possession of the property. The procedure on the part of the liquidator is to apply for the appointment of an ancillary receiver in the foreign jurisdiction in order to bring the property under his control. *Van Schaick v. Parsons*, 11 Fed. Supp. 654.

Sec. 13.

1939. ✓ Section 2215.9 held not retroactive. *Cascade County v. Weaver*, Mont., 90 P. (2d) 164.

1939. ✓ The fact that the legislature by section 1617 exempted city property from the payment of the five mill levy did not obligate it to make the same exemption as to any tax in excess of the five mill levy. It is no more double taxation for city property to bear its share of a levy in excess of five mills, than it is for county property outside of a city. Such a levy is not violative of the constitutional provision. *State ex rel. Siegfried v. Carbon County et al.*, Mont., 92 P. (2d) 301.

1935. ✓ Laws of 1933, chapter 42, and Laws of 1935, chapter 61, concerning the extension of leases of state lands for grazing purposes, held not to violate Const. Art. 15, § 13, or the fourteenth amendment of the constitution of the United States. *Leuthold v. Brandjord*, 100 Mont. 96, 47 P. (2d) 41.

Sec. 18.

1937. ✓ A common-law trust held not to come within this section and, therefore subject to statutory provisions relating to the organization and management of corporations, since the constitution, by its own terms, declares that the word "corporations" shall have a certain meaning as applied to the article of the constitution in which it is found. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

Sec. 20.

1937. ✓ Section 381 is not invalid as a special act by requiring a bidder to furnish back numbers of the Montana reports, since anyone can do so, although one publisher was better equipped to furnish them because it had the matrices used in printing such reports. *State ex rel. Helena Allied Printing Council v. Mitchell*, 105 Mont. 326, 74 P. (2d) 417.

ARTICLE XVI

Counties—Municipal Corporations and Offices

Section 5. There shall be elected in each county the following county officers who shall shall possess the qualifications for suffrage prescribed by section 2 of Article IX of this constitution and such other qualifications as may be prescribed by law:

One county clerk who shall be clerk of the board of county commissioners and ex-officio recorder; one sheriff; one treasurer, who shall be collector of the taxes, provided, that the county treasurer, shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified. Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the pur-

pose of electing the aforesaid offices, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order. [This amendment was adopted by vote of the people November 8, 1938, and became effective by virtue of the governor's proclamation December 2, 1938. L. '39, page 727.

Note. For act submitting this amendment to a vote of the people see L. '37, Ch. 93.

1939.✓ Under constitution article 19, section 9, the amendment to the constitution article 16, section 5, increasing the terms of county officers went into effect on the day of its approval by the vote of the people on November 8, 1938, and not on a later date when the proclamation of the governor was issued, despite the provision of section 4 of chapter 93 of the laws of 1937, providing that it should go into effect on the date of the governor's proclamation. State ex rel. O'Connell v. Duncan, Mont., 88 P. (2d) 73.

1939.✓ The 1938 amendment to this section, increasing the terms of office of county officers, is self-executing. State ex rel. O'Connell v. Duncan, Mont., 88 P. (2d) 73.

1939.✓ The 1938 amendment to this section, increasing the terms of office of county officers, applies to officers elected to office at the same election at which the amendment was adopted by the people. State ex rel. O'Connell v. Duncan, Mont., 88 P. (2d) 73.

Sec. 8. Abandonment, abolishment, or consolidation of counties. Any county or counties in existence on the first day of January, 1935, under the laws of the state of Montana or which may thereafter be created or established thereunder shall not be abandoned, abolished and/or consolidated either in whole or in part or at all with any other county or counties except by a majority vote of the duly qualified electors in each county proposed to be abandoned, abolished and/or consolidated with any other county or counties expressed at a general or special election held under the laws of said state. [Adopted by vote of the people at the general election held November 3, 1936, and became effective by the governor's proclamation on December 2, 1936. L. '37, page 731.

ARTICLE XVII

Public Lands

Section 1.

1938.✓ An agreement of the state land board to pool school lands with those of private owners for the development of gas wells and production of gas therefrom, and apportioning royalties among the owners, was held to fully protect the state's rights to the gas. Toomey v. State Board of Land Commissioners, 106 Mont. 547, 81 P. (2d) 407.

1938.✓ Where it was contended that the state board, by pooling school lands with those of private owners of land under an agreement for the exploiting of

the gas resources thereof under an agreement for unit operation, relinquished the state's royalties therefrom to the owners of the remainder of the land, the court said that the contention overlooked the migratory nature of gas. Toomey v. State Board of Land Commissioners, 106 Mont. 547, 81 P. (2d) 407.

1938.✓ The state land board has the duty of insuring to the state the full market value of the estate disposed of, in making oil and gas leases under an agreement to operation under the unit plan, and receiving the proceeds and providing that they remain intact and on such determination this court will not substitute its opinion for the opinion of the board, nor will it control the discretion of the board unless it appears that the action of the board is arbitrary and, in effect, fraudulent. Toomey v. State Board of Land Commissioners, 106 Mont. 547, 81 P. (2d) 407.

1938.✓ When an estate or interest in state lands is sold, as distinguished from the land itself, there need not be a public sale and advertising unless the legislature so directs, and the legislature has power to determine the method by which to ascertain the full market value of the estate or interest. Toomey v. State Board of Land Commissioners, 106 Mont. 547, 81 P. (2d) 407.

1937.✓ In an action by an irrigation district against the state, the state board of land commissioners, and the county treasurer of the county in which the district was situated, to have certain levies of irrigation assessments declared valid liens upon lands owned by the state, in the district, and that the district have a right to collect such assessments from the state, it was held that the plaintiff had such right, and that the permanent school fund, from which money was loaned on first mortgage on lands which later were incorporated into the district, was not reduced illegally in violation of the constitution making such fund inviolate. Toole County Irrigation District v. State, 104 Mont. 420, 67 P. (2d) 989.

1935.✓ The prohibition against leasing state lands at less than the full market value means, that the state land board shall secure the full market value of the lease at the time such lease is issued. Rathbone v. State Board of Land Commissioners, 100 Mont. 109, 47 P. (2d) 47.

1935.✓ Under the Laws of 1933, chapter 42, concerning the power of the state land board to renew expiring leases of state lands for agricultural or grazing purposes, and constitution article 17, § 1, the board, in discharge of its trust, should secure the largest legitimate advantage to the beneficiary, and it has no power or authority to renew an expiring lease at the non-competitive leasing price when there is another applicant willing and able to pay a higher rental, for the statutory rate is recognized as the full market value which has been ascertained in the manner provided by the constitution only when there is no competition. Rathbone v. State Board of Land Commissioners, 100 Mont. 109, 47 P. (2d) 47.

1935.✓ Laws of 1935, chapter 61, concerning extensions of leases of state lands for grazing purposes, in connection with Laws of 1933, chapter 42, construed and held not violative of the constitution article 17, § 1. Rathbone v. State Board of Land Commissioners, 100 Mont. 109, 47 P. (2d) 47.

1935.✓ Laws of 1933, chapter 42, and laws of 1935, chapter 61, which provided for extensions of leases of state lands for grazing purposes, did not violate either constitution, Art 5, § 26, or Art. 17, § 1. Leuthold v. Brandjord, 100 Mont. 96, 47 P. (2d) 41.

1935.✓ The term "general law," as used in this section, does not necessarily mean a law which operates

on all persons or all things pertaining to the subject of the legislation. The word "general" comes from the Latin genus and relates to the whole kind, class, or order; hence a law which affects a class of persons or things, less than all, may be a general law. *Leuthold v. Brandjord*, 100 Mont. 96, 47 P. (2d) 41.

Sec. 2.

1938. Under this section the state may enter into pooling agreements and lease school lands thereunder for the exploiting of oil and gas resources, although not specifically so authorized. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. The state board of land commissioners has the right to change or modify existing oil and gas leases of school lands in any respect not inconsistent with the enabling act, the constitution, or the statutes. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

ARTICLE XVIII

Labor

Section 4. A period of eight hours shall constitute a day's work in all industries, occupations, undertakings and employments, except farming and stock raising; provided, however, that the legislative assembly may by law reduce the number of hours constituting a day's work whenever in its opinion a reduction will better promote the general welfare, but it shall have no authority to increase the number of hours constituting a day's work beyond that herein provided. [Amendment adopted by vote of the people at the general election held November 3, 1936, and became effective by the governor's proclamation on December 2, 1936. L. '37, page 732.]

1938. While Const. Art. 18, § 4, as amended in 1936, is without controlling effect upon the constitutionality of 3073.1, enacted prior thereto, it is of some significance in the sense that it served to disclose the existence of a public purpose or policy of the state relating to the hours of labor. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938. The courts may take judicial notice of current economic conditions in passing on the validity of statutes regulating maximum hours of labor. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

ARTICLE XIX

Miscellaneous Subjects and Future Amendments

Section 1.

1937. Where a constitutional question is decisive of a case before the supreme court the court is required to decide that question though it is raised by the court itself. *In re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

Sec. 4.

1939. A mortgage was executed and filed before the filing of a declaration of homestead. The right to foreclose was barred by the statute of limitations and mortgagors filed a declaration of homestead, which was held valid as against an execution in aid

of a judgment on the debt, the debt was unsecured at the time of filing the declaration, as the mortgage was dead. *Siuru v. Sell et al.*, Mont., 91 P. (2d) 411.

Sec. 9.

1939. Under constitution article 19, section 9, the amendment to the constitution article 16, section 5, increasing the terms of county officers, went into effect on the day of its approval by the vote of the people on November 8, 1938, and not on a later date when the proclamation of the governor was issued, despite the provision of section 4 of chapter 93 of the Laws of 1937, providing that it should go into effect on the date of the governor's proclamation. *State ex rel. O'Connell v. Duncan*, Mont., 88 P. (2d) 73.

1935. Public offices may be created, abolished or the term shortened or lengthened by constitutional amendment at any time the sovereign power, in our government the people, choose to express their will to that effect in the manner provided in the constitution. *State ex rel. O'Connell v. Duncan*, Mont., 88 P. (2d) 73.

ARTICLE XXI

Section 2.

1937. Although state lands situated within an irrigation district are subject to assessment for the district, since they are not taxes, within the meaning of Const. Art. 12, § 2, or section 1998 of the code, they may not be sold to satisfy the lien of the assessment. *Toole County Irrigation District v. State*, 104 Mont. 420, 67 P. (2d) 989.

Section 6. The public school permanent fund, the other permanent funds originating in land grants from the United States for the support of higher institutions of learning, and for other state institutions, subject to investment, shall be invested as parts of the Montana trust and legacy fund; so also all other funds in the custody of any officer or officers of the state, subject to investment, that the legislative assembly may prescribe. The separate existence and identity of each and every fund invested and administered as a part of the Montana trust and legacy fund shall be strictly maintained.

All investments belonging to the public school permanent fund, except investments in state farm mortgage loans, and all investments belonging to the said land grant funds, shall be transferred to the Montana trust and legacy fund at the full amounts of the unpaid balances of such investments. [This amendment to art. XXI, sec. 6, of the constitution of Montana was voted at an election held November 8, 1938, and became effective by virtue of the governor's proclamation December 2, 1938. L. '39, page 728.]

Note. For the act submitting this amendment to a vote of the people see L. '37, Ch. 99.

1935. Cited in *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624, holding sections 173.2 et seq., unconstitutional as to cities and towns.

Sec. 7. The state shall accept for investment and administration as parts of the Montana trust and legacy fund, sinking funds, permanent funds, cumulative funds and trust funds belonging to or in the custody of any of the political subdivisions of the state when requested to do so by the governing board of such political subdivision, subject, however, to such limitations as the legislative assembly may prescribe. The legislative assembly may provide for the investment and administration as a part of the Montana trust and legacy fund of any other fund subject to its power. [This amendment to art. XXI, sec. 7, of the constitution of Montana was voted at an election held November 8, 1938, and became effective by virtue of the governor's proclamation December 2, 1938. L. '39, page 728.]

Note. For the act submitting this amendment to a vote of the people see L. '37, Ch. 99.

Sec. 8. The Montana trust and legacy fund shall be safely and conservatively invested in public securities within the state, as far as possible, including school district, county and municipal bonds, and bonds of the state of Montana; but it may also be partly invested in bonds of the United States, bonds fully guaranteed by the United States as to principal and interest, and federal land bank bonds. All investments shall be limited to safe loan investments bearing a fixed rate of interest. In making long term investments preference shall be given to securities payable on the amortization plan or serially. The legislative assembly may provide additional regulations and limitations for all investments from the Montana trust and legacy fund.

All existing constitutional guarantees against loss or diversion applying to the public school fund, to the funds of the state university and to the funds of all other state institutions of learning, shall remain in full force and effect. [This amendment to art. XXI, sec. 8, of the constitution of Montana was voted at an election held November 8, 1938, and became effective by virtue of the governor's proclamation December 2, 1938. L. '39, page 728.]

Note. For the act submitting this amendment to a vote of the people see L. '37, Ch. 99.

Sec. 9. On the last day of March, of June, of September and of December of each year, the state treasurer shall apportion all interest

collected for the Montana trust and legacy fund during the three month period then terminating to all the separate and integral funds which constitute such fund on the day of such apportionment and which constituted parts of the fund on the first day of the three month period then terminating. The basis of apportionment shall be the average amount of each such fund between the first day and the last day of the three month period. [This amendment to art. XXI, sec. 9, of the constitution of Montana was voted at an election held November 8, 1938, and became effective by virtue of the governor's proclamation December 2, 1938. L. '39, page 728.]

Note. For the act submitting this amendment to a vote of the people see L. '37, Ch. 99.

Sec. 10. The state treasurer shall keep all deposits of money belonging to the Montana trust and legacy fund separate and distinct from other deposits of money in his keeping. [This amendment to art. XXI, sec. 10, of the constitution of Montana was voted at an election held November 8, 1938, and became effective by virtue of the governor's proclamation December 2, 1938. L. '39, page 728.]

Note. For the act submitting this amendment to a vote of the people see L. '37, Ch. 99.

1938. The state teachers' retirement board may invest funds in county relief warrants issued before the expiry of the act authorizing them (§ 335.17-1 et seq.) payable from taxes levied after the expiry of such act. *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

1935. Cited in *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624, holding sections 173.2 et seq., unconstitutional as to cities and towns.

Sec. 11. All money in any of the separate and integral funds constituting the Montana trust and legacy fund and the interest apportioned therefrom, shall be subject to payment to the person, institution or other entity entitled thereto, without appropriation by the legislative assembly, upon proper authorization as provided by law. [This amendment to art. XXI, sec. 11, of the constitution of Montana was voted at an election held November 8, 1938, and became effective by virtue of the governor's proclamation December 2, 1938. L. '39, page 728.]

Note. For the act submitting this amendment to a vote of the people see L. '37, Ch. 99.

1939 Supplement

to the

1935 MONTANA REVISED CODES

Political Code

CHAPTER 1

CODES—CONSTRUCTION—GENERAL PROVISIONS

3. ✓ Laws, when retroactive.

1935. This section is a rule of construction. State ex rel. Whitlock v. State Board of Equalization, 100 Mont. 72, 45 P. (2d) 684.

4. Codes, how construed.

✓1938. Under the rule laid down by section 4 of R. C. M. 1935, requiring liberal construction of the codes, section 25 cannot be construed strictly. State ex rel. Board of Com'rs of Valley County v. Bruce, 106 Mont. 322, 77 P. (2d) 403.

✓1938. In view of section 4, requiring liberal construction of statutes in civil actions, it was held that the acknowledgment of a testator to a will may be made in any manner that conveys to the mind of a subscribing witness of reasonable intelligence the testator's intention to acknowledge its execution. In re Bragg's Estate, 106 Mont. 132, 76 P. (2d) 57. 1938. Cited in In re Bragg's Estate, 106 Mont. 132, 76 P. (2d) 57.

15. ✓ Words and phrases, how construed.

1937. A corporation is not a "person" who may practice law. State ex rel. Freebourn v. Merchants' Credit Service, 104 Mont. 76, 66 P. (2d) 337.

16. Certain words defined.

1936. ✓ Memorandum of costs must be filed and served within five days from date of notice of decision on application for writ of supervisory control in supreme court rather than within that time from issuance of writ, and motion to strike memorandum not so filed and served was granted in State ex rel. Clark v. District Court, 103 Mont. 145, 61 P. (2d) 836.

1936. ✓ Cited in State ex rel. Tillman v. District Court, 101 Mont. 176, 53 P. (2d) 107.

CHAPTER 2

SOVEREIGNTY AND TERRITORIAL JURISDICTION OF THE STATE

Section

23. Yellowstone national park.

23.1. Same—purchase of state land by United States—jurisdiction—withdrawal of consent.

Section

24. Repealed.

25. Concurrent jurisdiction of state—reservation of certain rights.

22. Glacier national park.

Note. For statute authorizing transfer to the United States of all mineral rights in state lands included in Glacier national park, see § 1805.65-1. 1938. Cited in State ex rel. Board of Com'rs of Valley County v. Bruce, 106 Mont. 322, 77 P. (2d) 403.

23. Yellowstone national park. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over all that part of territory situate in the state of Montana now embraced in the Yellowstone national park, described as follows:

Beginning at the intersection of the east boundary of Yellowstone park with the south boundary of Montana; thence north to the northeast corner of said park; thence west along the north boundary of the park to the northwest corner thereof; thence south along the west boundary of the park to the boundary between Montana and Idaho; thence easterly along that boundary to the west boundary of Wyoming; thence north along the west boundary of Wyoming to the northwest corner thereof; thence east along the boundary between Wyoming and Montana to the east boundary of said park, the place of beginning; containing an area of approximately one hundred ninety-eight (198) square miles, saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid described land, as long as the lands herein described are used for a national park, and no other purposes, in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state, but outside the lands aforesaid. [L. '39, Ch. 142, § 1, amending R. C. M. 1935, § 23. Approved March 11, 1939.

Section 3 repeals conflicting laws.

1938. ✓ Cited in *State ex rel. Board of Com'rs of Valley County v. Bruce*, 106 Mont. 322, 77 P. (2d) 403.

23.1. Same—purchase of state land by United States—jurisdiction—withdrawal of consent. The consent of the state of Montana to the purchase by the United States of lands within the state of Montana to be embraced in Yellowstone national park, other than the lands described in section 1 hereof [23], and the consent of the state of Montana to the exercise of legislative jurisdiction by the United States over any additional lands to be embraced in said national park, as such consents may be contained in the act of the second legislative assembly of the state of Montana approved February 14, 1891, entitled, "An act ceding to the United States jurisdiction over certain lands," or any amendment of said act, is hereby withdrawn, and exclusive legislative jurisdiction over all lands within the state of Montana that may be added hereafter to said national park shall be retained in the state of Montana. [L. '39, Ch. 142, § 2. Approved March 11, 1939.]

Section 3 repeals conflicting laws.

24. Repealed. [L. '39, Ch. 154, § 1. Approved and in effect March 11, 1939.]

25. Concurrent jurisdiction of state—reservation of certain rights. Pursuant to article 1, section 8, paragraph 17 of the constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to any lands within the limits of this state, which shall be acquired by the complete purchase by the United States, for any of the purposes described in said paragraph of the constitution of the United States, said jurisdiction to continue as long as said lands are held and occupied by the United States for said purposes; reserving, however, to this state the right to serve and execute civil or criminal process lawfully issued by the courts of the state, within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or without such territory; and reserving further to the said state the right to tax persons and corporations, their franchises and property within said territory; and reserving further to the state and its inhabitants and citizens the right to fish and hunt, and the right of access, ingress and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state of Montana jurisdiction in the enforcement of state laws relating to

the duties of the livestock sanitary board and the state board of health, and the enforcement of any regulations promulgated by said boards in accordance with the laws of the state of Montana; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, shall file an accurate map or plat and description by metes and bounds of said lands in the office of the county clerk and recorder of the county in which said lands are situated, and if such lands shall be within the corporate limits of any city, such map or plat shall also be filed in the office of the city clerk of said city, and the filing of such map as herein provided, shall constitute acceptance of the jurisdiction by the United States as herein ceded. The offer by the state of Montana to cede to the federal government legislative jurisdiction over areas within the state of Montana as contained in the act of the second legislative assembly of the state of Montana, 1891, entitled: "An act giving the consent of the state of Montana to the purchase, by the United States, of land in any city or town of the state, for the purpose of United States court house, postoffice and for other purposes" approved March 5, 1891, as amended by the act of the third legislative assembly of 1893, an act entitled: "An act giving the consent of the state of Montana to the purchase by the United States of land in any city or town of the state for the purpose of United States court house, postoffices and for other like purposes," approved March 9, 1893, is hereby withdrawn except as to areas heretofore completely purchased or acquired by the federal government and over which areas the federal government has heretofore assumed either exclusive legislative jurisdiction or concurrent legislative jurisdiction under the terms of one or the other of said acts. [L. '39, Ch. 155, § 1, amending R. C. M. 1935, § 25. Approved and in effect March 11, 1939.]

Section 2 repeals conflicting laws.

1938. Where the federal government purchased land for purposes authorized by the federal constitution the acceptance of the grant of exclusive jurisdiction under section 25 was presumed, there being nothing from which a contrary intent could be presumed. *State ex rel. Board of Com'rs of Valley County v. Bruce*, 106 Mont. 322, 77 P. (2d) 403.

1938. Where the federal government purchased land for the dam project mentioned in § 25.1, before operative date of that section, and took possession thereof, and built a town thereon over which it exercised complete governmental powers, under section 25, the state could not exercise taxing powers as to personal property therein despite the reservation of taxing powers to the state under section 25.1, although there were some provisions in the construction contracts requiring compliance with state laws. *State ex rel. Board of Com'rs of Valley County v. Bruce*, 106 Mont. 322, 77 P. (2d) 403.

1938. The filing of a map or plat and description of state land ceded to federal government under this section, is not a condition precedent to the cession of jurisdiction by the state to the federal government. State ex rel. Board of Com'rs of Valley County v. Bruce, 106 Mont. 322, 77 P. (2d) 403.

1938. Under the rule laid down by section 4 of R. C. M. 1935, requiring liberal construction of the codes, section 25 cannot be construed strictly. State ex rel. Board of Com'rs of Valley County v. Bruce, 106 Mont. 322, 77 P. (2d) 403.

1938. The constitutional requirement of levy of uniform taxes throughout the state is not violated by R. C. M. 1935, § 25, in ceding exclusive jurisdiction over land purchased by the federal government for purposes set forth in the constitution without reserving power to the state to tax personal property within such lands. State ex rel. Board of Com'rs of Valley County v. Bruce, 106 Mont. 322, 77 P. (2d) 403.

1938. On all land within the purview of section 25.1, which was acquired by the federal government by purchase or condemnation subsequent to the passage and approval of section 25.1, and all lands which were a part of the public domain, all property located thereon, belonging to persons or private corporations, is subject to taxation, and all lands acquired by purchase or condemnation since the enactment of section 25.1 are subject to all reservations and exceptions found in that section. State ex rel. Board of Com'rs of Valley County v. Bruce, 106 Mont. 322, 77 P. (2d) 403.

1937. The last clause of this section concerning the filing of a map or plat was a legislative direction for the preservation of a record of a transaction as to which the consent of the act had operated; the word "provided," as there used, was uttered as a conjunction, meaning "and." State v. Bruce, 104 Mont. 500, 69 P. (2d) 97.

1937. County taxing officers are without right or authority to tax any of the property within the area of any county over which the United States has assumed exclusive jurisdiction by virtue of purchase, as described in the filed plat, and in all cases where the land was purchased by the United States prior to the passage and approval of section 25.1. But on land which was acquired subsequent to the passage and approval of that act, and all lands which were part of the public domain, all property of persons other than the United States, is subject to taxation by the state. State v. Bruce, 104 Mont. 500, 69 P. (2d) 97.

25.1. Concurrent jurisdiction over Fort Peck dam ceded to United States—reservation of rights to state.

1938. On all land within the purview of section 25.1, which was acquired by the federal government by purchase or condemnation subsequent to the passage and approval of section 25.1, and all lands which were a part of the public domain, all property located thereon, belonging to persons or private corporation, is subject to taxation, and all lands acquired by purchase or condemnation since the enactment of section 25.1 are subject to all reservations and exceptions found in that section. State ex rel. Board of Com'rs of Valley County v. Bruce, 106 Mont. 322, 77 P. (2d) 403.

1938. Where the federal government purchased land for the dam project mentioned in § 25.1, before the operative date of that section, and took possession thereof, and built a town thereon over which it exercised complete governmental powers, under sec-

tion 25, the state could not exercise taxing powers as to personal property therein despite the reservation of taxing powers to the state under section 25.1, although there were some provisions in the construction contracts requiring compliance with state laws. State ex rel. Board of Com'rs of Valley County v. Bruce, 106 Mont. 322, 77 P. (2d) 403.

1937. County taxing officers are without right or authority to tax any of the property within the area of any county over which the United States has assumed exclusive jurisdiction by virtue of purchase, as described in the filed plat, and in all cases where the land was purchased by the United States prior to the passage and approval of section 25.1. But on land which was acquired subsequent to the passage and approval of that act, and all lands which were part of the public domain, all property of persons other than the United States, is subject to taxation by the state. State v. Bruce, 104 Mont. 500, 69 P. (2d) 97.

CHAPTER 3

GENERAL RIGHTS OF THE STATE OVER PERSONS

27. Original and ultimate title.

1939. Chapter 14A of this code, L. '37, Ch. 80, the unfair practices act, does not violate this section. Associated Merchants of Montana v. Ormesher, 107 Mont. 530, 86 P. (2d) 1031.

33. Residence, rules for determining.

1938. In a divorce action evidence held to show that the defendant, at the time the action was commenced, was a resident of another county than the one in which the action was brought. Archer v. Archer, 106 Mont. 116, 75 P. (2d) 783.

1938. "Our legislature in declaring these rules for determining residence has adopted the rules which courts generally prescribe with reference to determining domicile; hence the decisions with reference to the rules for determining domicile are clearly in point." State ex rel. Duckworth v. District Court, 107 Mont. 97, 80 P. (2d) 367.

CHAPTER 7

POLITICAL SUBDIVISION

Section

45. Number of representatives from each county.

45. Number of representatives from each county. In accordance therewith each county of the state shall be entitled to, and shall elect at each biennial general, state and county election, the number of members of the house of representatives in the legislative assembly of Montana herein below allotted and apportioned to it, and set opposite its name as follows, to-wit:

Beaverhead County.....	One Member
Big Horn County.....	One Member
Broadwater County.....	One Member
Blaine County.....	Two Members
Carbon County.....	Three Members

Carter County.....	One Member
Cascade County.....	Six Members
Chouteau County.....	Two Members
Custer County.....	Two Members
Daniels County.....	One Member
Dawson County.....	Two Members
Deer Lodge County.....	Three Members
Fallon County.....	One Member
Fergus County.....	Four Members
Flathead County.....	Four Members
Gallatin County.....	Three Members
Garfield County.....	One Member
Glacier County.....	One Member
Golden Valley County.....	One Member
Granite County.....	One Member
Hill County.....	Two Members
Jefferson County.....	One Member
Judith Basin County.....	One Member
Lake County.....	One Member
Lewis and Clark County.....	Three Members
Liberty County.....	One Member
Lincoln County.....	One Member
Madison County.....	One Member
McCone County.....	One Member
Meagher County.....	One Member
Mineral County.....	One Member
Missoula County.....	Four Members
Musselshell County.....	One Member
Park County.....	Two Members
Petroleum County.....	One Member
Phillips County.....	Two Members
Pondera County.....	One Member
Powder River County.....	One Member
Powell County.....	One Member
Prairie County.....	One Member
Ravalli County.....	Two Members
Richland County.....	One Member
Rosebud County.....	One Member
Roosevelt County.....	Two Members
Sanders County.....	One Member
Sheridan County.....	Two Members
Silver Bow County.....	Ten Members
Stillwater County.....	One Member
Sweet Grass County.....	One Member
Teton County.....	One Member
Toole County.....	One Member
Treasure County.....	One Member
Valley County.....	Two Members
Wheatland County.....	One Member
Wibaux County.....	One Member
Yellowstone County.....	Five Members

IL. '39, Ch. 144, § 1, amending R. C. M. 1935,

§ 45. Approved and in effect March 11, 1939.

Section 2 repeals conflicting laws.

CHAPTER 9

THE LEGISLATIVE ASSEMBLY—ITS COMPOSITION, ORGANIZATION, OFFICERS AND EMPLOYEES

Section

62. Officers and employees of senate—designation—number—how employed.

63. Officers and employees of the house—personnel.

62. Officers and employees of senate—designation—number—how employed. The officers and employees of the senate may consist of a president, a president pro tem., one secretary of the senate, one assistant secretary of the senate, one chaplain, one sergeant-at-arms, three assistant sergeants-at-arms, one clerk to the sergeant-at-arms, one secretary to the president, one journal clerk, one assistant journal clerk, one enrolling clerk, one assistant enrolling clerk, one engrossing clerk, one assistant engrossing clerk, one bill clerk, one assistant bill clerk, one reading clerk, one printing clerk, one mailing clerk, one doorkeeper, three assistant doorkeepers, one janitor, three assistant janitors, one day watchman, one night watchman, four pages and such number of committee clerks and/or stenographers as the senate may, by motion, from time to time determine, not exceeding forty in number; provided, however, that when the orderly and expeditious conduct of the business of the senate so requires, the senate may, by resolution, authorize the employment of one senate law clerk and/or one assistant senate law clerk, in addition to the hereinabove specifically enumerated officers and employees. [L. '37, Ch. 50 § 1, amending R. C. M. 1935, § 62. Approved and in effect February 23, 1937, repealing sections 62 and 76 of the revised code of 1935, and chapter 6 of the Laws of 1935, and all conflicting laws.

63. Officers and employees of the house—personnel. The officers and employees of the house of representatives shall consist of a speaker, a speaker pro tem, one chief clerk, one sergeant-at-arms, one chaplain, one first assistant to the sergeant-at-arms, one second assistant to the sergeant-at-arms, one assistant to the chief clerk, one clerk to the chief clerk, one bill clerk, one assistant bill clerk, one reading clerk, one clerk to the sergeant-at-arms, one journal clerk, one assistant journal clerk, one enrolling clerk, one assistant enrolling clerk, one engrossing clerk, one assistant engrossing clerk, one printing clerk, one assistant printing clerk, one secretary to speaker, one mailing and filing clerk, one secretary to the judiciary committee, one secretary to the appropriations committee, one payroll clerk,

one law clerk, one assistant law clerk, one head janitor, three assistant janitors, three doorkeepers, three watchmen, five pages, two telephone operators, two elevator operators, fifty stenographers, ten typists, twenty proofreaders, ten clerks and such other and further employees as the house of representatives and the senate may, by joint resolution, from time to time determine. [L. '39, Ch. 23, § 1, amending R. C. M. 1935, § 63. Approved and in effect February 15, 1939. Amending this section as amended by L. '37, Ch. 44, § 1, approved February 23, 1937, in effect May 1, 1937.

Section 2 repeals conflicting laws:

CHAPTER 10

THE POWERS, DUTIES, AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY

Section

76. Compensation of other officers and employees of legislature—time for which salaries paid.

76. Compensation of other officers and employees of legislature—time for which salaries paid. The compensation designated herein shall be paid to the following officers and employees of the legislative assembly;

The secretary of the senate, the chief clerk of the house of representatives, the sergeant-at-arms of each house, the senate law clerk and the house of representatives law clerk, ten dollars (\$10.00) per day each;

The assistant secretary of the senate, the assistant chief clerk of the house of representatives, the journal clerk, the enrolling clerk, the engrossing clerk, the bill clerk, the assistant sergeants-at-arms of the senate, the assistant sergeants-at-arms of the house of representatives, eight dollars (\$8.00) per day each;

The assistant senate law clerk and the assistant house of representatives law clerks, (in case such assistants are employed) seven dollars (\$7.00) per day;

The assistant journal clerk, the assistant enrolling clerk, the assistant engrossing clerk, the assistant bill clerk, the printing clerk, the reading clerk, the clerk to the sergeant-at-arms and the mailing clerk of the senate, the clerk to the chief clerk of the house of representatives, the clerk to the secretary of the senate, the secretary to the president of the senate, the payroll clerk of the house of representatives, the secretary to the speaker of the house of representatives, the mailing and filing clerk of the house of representatives, the secretary

to the house of representatives appropriations committee, six dollars (\$6.00) per day each;

The chaplain, committee clerks, stenographers, typists, proofreaders, doorkeepers, assistant doorkeepers, janitors, assistant janitors and watchmen of each house, the telephone operators of the house of representatives, the elevator operators of the house of representatives, five dollars (\$5.00) per day each;

Pages, four dollars (\$4.00) per day each; all other employees of the legislative assembly not herein specifically enumerated, five dollars (\$5.00) per day each;

The salaries herein specified shall be paid for each and every day of the entire legislative session, commencing with the date of employment of the officer or employee, save and except that any of said officers or employees whose services are dispensed with for any portion of the session shall receive pay only for the number of days during which services are performed by such officer or employee. [L. '37, Ch. 50, § 2, amending R. C. M. 1935, § 76. Approved and in effect Feb. 23, 1937, and repealing sections 62 and 76 of the revised code of 1935, and chapter 6 of the laws of 1935, and all conflicting laws.

CHAPTER 12

STATUTES—THEIR ENACTMENT AND OPERATION

90. Statutes, when effective.

1939. Every statute, unless a definite time is prescribed therein, takes effect on the first day of July of the year of passage and approval, and is in full force and effect until suspended by the filing of a proper petition for a referendum, and any bonds issued, or other acts done prior to the filing of such a petition are valid. *Lodge v. Ayers, Governor, et al., Mont., 91 P. (2d) 691.*

CHAPTER 13

INITIATIVE AND REFERENDUM

Section

104. Manner of voting—ballot.

99. Form of petition for referendum.

1936. Where an initiative ballot proposed to be submitted to the voters was prepared in disregard of statutory requirements, the supreme court had original jurisdiction to issue an injunction restraining the secretary of state from certifying the measure to county clerks, and the clerks from distributing copies thereof, since the matter was one of vital public interest involving the liberties of the people of the state. *Sawyer Stores, Inc. v. Mitchell, 103 Mont. 148, 62 P. (2d) 342.*

100. Form of petition for initiative.

1936. The signers of an initiative petition may, in an appropriate manner and at the proper time if they so desire, withdraw from such petition. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

1936. The requirement that a copy of the measure be attached to each sheet of the petitioners' signatures is mandatory, and not merely directory, at least where the question is raised prior to the submission of the proposed measure to a vote of the people at an election and a favorable vote on such measure obtained, and a petition which does not comply therewith does not warrant the submission of a proposed initiative measure to the vote of the people. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

1936. The right of petitioners to withdraw their names from a petition for initiative exists until the secretary of state has finally determined, in the manner provided by statute, that the petition is sufficient. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

1936. In determining the number of petitioners the secretary was not authorized to count the signatures on one petition which did not contain a full and complete copy of the measure along with those on another petition which did. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

1936. The purpose of requiring a copy of the measure to be attached to the petition is to enable the signer thereto to act intelligently and avoid fraud. Such compliance with the statute is jurisdictional and the secretary is without power to act in the absence thereof. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

1936. The statutes enacted in aid of the powers of the initiative reserved to the people should be liberally construed, and should not be interfered with by the court, except upon a clear showing that the law is being violated. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

101. County clerk to verify signatures.

1937. Under section 4810 and other statutory and constitutional provisions, an elector may inspect petitions for a referendum in the possession of the recorder and county clerk, whether or not they be regarded as public records. *State ex rel. Halloran v. McGrath*, 104 Mont. 490, 67 P. (2d) 838.

1937. In a mandamus proceeding to compel the county clerk and recorder to permit an elector to inspect petitions for a referendum in his possession, it was ordered that the time between the demand for inspection and the service of a writ of peremptory mandamus on the respondent, both dates inclusive, should not be considered by him in computing the time within which he must complete his verification and certification, and forward the petitions, or sections thereof, to the secretary of state as provided by law. *State ex rel. Halloran v. McGrath*, 104 Mont. 490, 67 P. (2d) 838.

1936. Withdrawal petition held to show from which original petition for initiative the names were withdrawn. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

1936. A certificate which is sufficient prima facie evidence of the qualifications and the genuineness of the signatures of the electors on an initiative petition has the same probative effect when found on the petition for the withdrawals of names from an initiative petition. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

102. Notice to governor and proclamation.

1936. The signers of an initiative petition may, in an appropriate manner and at the proper time if they so desire, withdraw from such petition. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

1936. The right of petitioners to withdraw their names from a petition for initiative exists until the secretary of state has finally determined, in the manner provided by statute, that the petition is sufficient. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

1936. In determining the number of petitions the secretary was not authorized to count the signatures on one petition which did not contain a full and complete copy of the measure along with those on another petition which did. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

1936. The word "immediately" in the above section must be construed to allow the secretary sufficient time reasonably and accurately to perform his duties required by law. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

103. Certification and numbering of measures—constitutional amendments.

1936. The "title" on the ballot need not be a copy of the title of the proposed measure. The former may not contain more than 100 words. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. Mailing of measures to voters does not obviate the necessity of complying with provisions as to contents of ballot. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. Each ballot shall contain the affirmative as well as the negative of each measure, and that the affirmative and the negative thereof shall bear the same number. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. Sections 103 and 104 were enacted for the purpose of safeguarding the ballot and giving notice to the voter of the nature and purpose of the initiative measure, to the end that the result shall represent the will of a majority of the voters. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. Where an initiative ballot proposed to be submitted to the voters was prepared in disregard of statutory requirements, the supreme court had original jurisdiction to issue an injunction restraining the secretary of state from certifying the measure to county clerks, and the clerks from distributing copies thereof, since the matter was one of vital public interest involving the liberties of the people of the state. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. After the supreme court had assumed jurisdiction and issued an order to show cause why the secretary of state should not be restrained from certifying an initiative measure to be submitted to the electorate, it was too late to contend that there was plenty of time for the petitioner to have discovered the insufficiency of the petitions and to have a hearing in the district court and have the decision of that court reviewed before the time of the proposed election. *Ford v. Mitchell*, 103 Mont. 99, 61 P. (2d) 815.

1936. The provisions of sections 103 and 104, initiative ballots, are mandatory, and not directory, and a substantial compliance therewith must be had. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. Initiative ballot on measure to tax stores held defective and not substantially, or at all, meeting the requirements of the law, particularly in that neither the title nor the legend were descriptive of the measure proposed, and that the ballot contained neither the affirmative nor the negative of the proposed measure, and that no opportunity was afforded the voter to express his will as to whether he was in favor of or opposed to the proposed measure. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

104. Manner of voting—ballot. The manner of voting on measures submitted to the people shall be by marking the ballot with a cross in or on the diagram opposite and to the left of the proposition for which the voter desires to vote. The form of ballot to be used on measures submitted to the people shall be submitted to and determined by the attorney general of the state of Montana. The following is a sample ballot representing negative vote:

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> | For Initiative Measure No. 6
Relating to Duties of Sheriffs. |
| <input checked="" type="checkbox"/> | Against Said Measure No. 6. |
| <input type="checkbox"/> | For Referendum Measure No. 7
Relating to Purchase of Insane Asylum. |
| <input checked="" type="checkbox"/> | Against Said Measure No. 7. |

[L. '37, Ch. 18, § 1, amending R. C. M. 1935. Approved and in effect February 10, 1937.]

Section 2 repeals conflicting laws.

1936. Mailing of measures to voters does not obviate the necessity of complying with provisions as to contents of ballot. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. Each ballot shall contain the affirmative as well as the negative of each measure, and that the affirmative and the negative thereof shall bear the same number. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. Sections 103 and 104 were enacted for the purpose of safeguarding the ballot and giving notice to the voter of the nature and purpose of the initiative measure, to the end that the result shall represent the will of a majority of the voters. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. The purposes of the ballot, under §§ 99-108, are: (1) To inform the voters of the nature and purposes of the measures; and (2) to afford each elector a means of expressing his approval or disapproval thereof, that is, or voting thereon. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. The provisions of sections 103 and 104, initiative ballots, are mandatory, and not directory, and a substantial compliance therewith must be had. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. Initiative ballot on measure to tax stores held defective and not substantially, or at all, meeting the requirements of the law, particularly in that neither the title nor the legend were descriptive of the measure proposed, and that the ballot contained neither

the affirmative nor the negative of the proposed measure, and that no opportunity was afforded the voter to express his will as to whether he was in favor of or opposed to the proposed measure. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

105. Printing and distribution of measures.

1936. Mailing of measures to voters does not obviate the necessity of complying with provisions as to contents of ballot. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. Where an initiative ballot proposed to be submitted to the voters was prepared in disregard of statutory requirements, the supreme court had original jurisdiction to issue an injunction restraining the secretary of state from certifying the measure to county clerks, and the clerks from distributing copies thereof, since the matter was one of vital public interest involving the liberties of the people of the state. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

CHAPTER 17

THE SECRETARY OF STATE

Section

135. Distribution of senate and house journals and session laws.
142. Publication of laws—index.

135. Distribution of senate and house journals and session laws. Immediately after the senate and house journals and the session laws mentioned in subdivision nine of the preceding section are bound, the secretary of state must distribute the same as follows:

1. To the county clerk of each county one copy of the senate journal and one copy of the house journal for the use of the county.

2. To the state historical library such number of copies of the senate and house journals, not exceeding 150 of each, as may be required by it for purposes of distribution and exchange; to the state law librarian, two copies of each house and of each senate journal for the use of said library, and such additional copies as may be necessary for the purposes of exchange; and to the library of congress, two copies of each house and of each senate journal.

3. To the lieutenant governor, each member of the legislative assembly, secretary of the senate and chief clerk of the house of representatives at the session at which the laws and journals were adopted, one copy.

He shall distribute the session laws as follows:

1. To each department of the government at Washington, and of the government of this state, one copy.

2. To the library of congress, eight copies; and to the state library, two copies.

3. To the state historical and miscellaneous library, two copies; to the state law librarian, four copies for the use of said state law library.

4. To the law libraries and the legislative reference libraries of each of the states and territories such number of copies as are given by them in exchange with the Montana state law library and the legislative reference libraries.

5. To the members of congress, to the United States district judge, to each of the judges of the supreme and district courts, and to each of the state officers of the state, one copy.

6. To the lieutenant governor, each member of the legislative assembly, secretary of the senate, and chief clerk of the house of representatives at the session at which laws and journals were adopted, one copy.

7. To each of the incorporated colleges of the state and to each unit of the state university and institutions, one copy; to the law librarian of the state of Montana as many copies as may be required by him for exchange with libraries and institutions maintained by other states, territories and public libraries.

8. To the county clerk of each county, three copies for the use of the county.

9. To each county attorney, and to each clerk of the district court, one copy. [L. '37, Ch. 46, § 1, amending R. C. M. 1935, § 135. Approved and in effect February 23, 1937.

Section 5 repeals conflicting laws.

142. Publication of laws—index. The secretary of state, in pursuance of subdivision 9 of section 134 of the political code, shall cause such laws as are therein specified, except resolutions, memorials, and bills appropriating money, to be printed with the heading of each law.

CHAPTER.....

numbered from 1 upward, using Arabic numerals for such numbering, and he shall omit from the laws the statement "Senate Bill No....." and "House Bill No....." and hereafter reference to the laws of any legislative session may be made as follows: "Chapter..... (giving number) of the laws of....." (giving the year in which same was enacted). Such laws shall be published in their numerical order, from 1 upward, as same have been filed in his office, and in such manner that each section shall have a side head or marginal summary, and that the chapter number shall appear as part of each page heading; provided, that resolutions, memorials, and bills appropriating money shall be printed in the latter part of the volume containing the said

laws, in the form and manner heretofore practiced in publishing such laws; and provided further, in all enrolled bills containing amendments to existing statutes, the new parts having been designated by underlining, shall be printed in italics. The secretary of state shall also have prepared and published with said laws, and bound in the same volume, a suitable index of the same, and an additional index showing what sections of the several codes of this state have been amended, repealed, altered, or changed by any of the laws published in that volume, which shall be known and designated as the "Code Index." [L. '39, Ch. 10, § 1, amending R. C. M. 1935, § 142. Approved and in effect February 7, 1939.

Section 2 repeals conflicting laws.

CHAPTER 18A

STATE INSURANCE COMMISSION

Section

173.1a. State insurance commission established—personnel—meetings—procedure.

173.1b. State insurance commission—powers and duties.

173.1c. State-owned property—policies of insurance on—approval of commission—necessity.

173.1a. State insurance commission established—personnel—meetings—procedure. There is hereby created a commission to be known as "the state insurance commission," which said commission shall be composed of the state auditor-ex officio commissioner of insurance, acting as chairman of said commission, state accountant and the chairman of the state board of equalization, all of whom shall perform the duties of the said commission without additional compensation or remuneration. The said commission shall convene at such time and place as may be designated in a notice of meeting served upon the members thereof by the chairman of said commission, which said notice shall be served not less than twenty-four hours before the date of said meeting. Two members of said commission shall constitute a quorum, and a majority vote of all members present shall authenticate any action taken by said commission. [L. '39, Ch. 103, § 1. Approved and in effect March 3, 1939.

173.1b. State insurance commission—powers and duties. The state insurance commission shall have the sole and exclusive power and authority, and it shall be its duty to examine and approve, by resolution recorded in its official minute book, all fire and casualty contracts or policies of insurance entered into by

and between the state of Montana, by or through any of its officers, boards and commissions, and any private insurance carrier; and the said commission shall have power, and it shall be its duty to make a study of the insurance needs of the state of Montana and assemble statistics and data and make such recommendations to the various officers, boards and commissions of the state of Montana as to the elements of physical hazards existing in all state property under the jurisdiction of said officers, boards and commissions as will tend to reduce fire and casualty hazards and do all things necessary toward securing just, fair and equitable insurance coverage on all risks owned or insured by the state of Montana. [L. '39, Ch. 103, § 2. Approved and in effect March 3, 1939.

173.1c. State-owned property — policies of insurance on — approval of commission — necessity. All contracts or policies of insurance covering state-owned properties or state risks shall be filed with the said state insurance commission, and no such contract or policy of insurance shall be valid until the same shall have first been filed with the said state insurance commission and shall have been examined and approved as herein provided, and no moneys shall be paid out of the state treasury to any person, firm or corporation, as a consideration or premium on any policy or contract of insurance, until said policy or contract of insurance has been examined and approved by the said state insurance commission. [L. '39, Ch. 103, § 3. Approved and in effect March 3, 1939.

Section 4 repeals conflicting laws.

CHAPTER 19

STATE INSURANCE

Section

173.2-173.20. Repealed.

173.21. Premiums earned under state fire insurance act of 1935—collection from school districts and counties.

173.22. Same—receipts—disposition.

173.23. Unearned premiums—refunds—payment.

173.24. Premiums and refunds—computation—set-offs—certification.

173.25. Unpaid premiums on state-owned property—payment—approval of board of examiners—credits received from reinsurance company—source of payment.

173.2-173.20. Repealed. By referendum No. 37 in November 1936, and proclaimed so repealed by the governor, December 2, 1936. [L. '39, Ch. 165, § 1, [173.21].

1937. Where, after the defeat on referendum of the state insurance law of 1935, R. C. M. 1935, Ch. 179, unearned premiums on state reinsurance contracts,

173.10, 173.12, were retained by the insurance company to apply on other contracts of insurance, Const. Art. 12, § 10, was not violated by such procedure, since it was a mere matter of bookkeeping and no money was paid out of the state treasury, *Fitzpatrick v. State Board of Examiners*, 105 Mont. 234, 70 P. (2d) 285, nor was Const. Art. 13, § 1, violated by the state retaining unearned premiums paid by counties and school districts, since the section does not prohibit donations to the state, nor loaning of credit to the state. Only the legislature, and not the courts, could reimburse such political units for the premiums paid.

1937. Under the state insurance act, R. C. M. 1935, Ch. 179, §§ 173.2-173.20, the board of examiners had authority, § 173.10, if it so desired, to enter into a contract for reinsurance with the short rate cancellation clause in the contract, and, hence, it could adjust the cancellation on that basis. *Fitzpatrick v. State Board of Examiners*, 105 Mont. 234, 70 P. (2d) 285.

1937. Policies of insurance issued by proper state officers, under the state insurance act, §§ 173.2-173.20, L. '35, Ch. 179, in favor of counties and school districts were, after December 2, 1936, the date of the governor's proclamation that the law had been defeated by referendum vote of the people, at an end, and the state was no longer legally obligated, nor was the state insurance fund legally obligated, to pay those political subdivisions for any loss sustained by them as a result of the perils enumerated in the act. The state insurance was destroyed and the unexpended funds formerly a part of it were in the state treasury subject to disposition by the legislature together with the amount of unearned premiums to which the state was entitled under the contract of reinsurance. *Fitzpatrick v. State Board of Examiners*, 105 Mont. 234, 70 P. (2d) 285.

1937. The state insurance act, sections 173.2-173.20, L. '35, Ch. 179, was in full force and effect during the interim allowing the people to act between its operative date, as declared in the act itself, and the date of the declaration of the result of the election. *Fitzpatrick v. State Board of Examiners*, 105 Mont. 234, 70 P. (2d) 285.

173.2. State insurance — losses insured against.

1937. Under the state insurance act, R. C. M. 1935, Ch. 179, §§ 173.2-173.20, the board of examiners had authority, § 173.10, if it so desired, to enter into a contract for reinsurance with the short rate cancellation clause in the contract, and, hence, it could adjust the cancellation on that basis. *Fitzpatrick v. State Board of Examiners*, 105 Mont. 234, 70 P. (2d) 285.

1937. The command in § 173.10 to the board of examiners to reinsure left the details to the board, and was not a delegation to it of legislative power. *Fitzpatrick v. State Board of Examiners*, 105 Mont. 234, 70 P. (2d) 285.

1937. The provision for cancellation of policies between the state and the insured political subdivisions, § 173.6, had no application to reinsurance contracts. *Fitzpatrick v. State Board of Examiners*, 105 Mont. 234, 70 P. (2d) 285.

1937. Where it was not contended that the board could have secured a better contract of reinsurance, § 173.10, or that it acted in bad faith in entering into the contract it did, but only that it was without power to enter into a contract providing for cancellation of the reinsurance contract, after defeat

of referendum, on any other basis than a pro rata return of the unearned premiums, it was held that such contention raised a question with which the court was not concerned. *Fitzpatrick v. State Board of Examiners*, 105 Mont. 234, 70 P. (2d) 285.

1935. Sections 173.2 et seq., providing for state insurance of public property, are unconstitutional as regards cities and towns. *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624.

1935. Cited in *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624, holding sections 173.2 et seq., unconstitutional as to cities and towns.

173.6. Premium payments—policy numbers.

1935. Cited in *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624, holding sections 173.2 et seq., unconstitutional as to cities and towns.

173.9. Premiums not to be assessed when fund exceeds million dollars.

1935. Cited in *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624, holding sections 173.2 et seq., unconstitutional as to cities and towns.

173.11. Notice of premiums due—payment.

1935. Cited in *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624, holding sections 173.2 et seq., unconstitutional as to cities and towns.

173.12. State insurance fund — disbursements — investment.

1935. Cited in *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624, holding sections 173.2 et seq., unconstitutional as to cities and towns.

173.16. Investigation of fires and losses—inspection of property prior to insuring—fire marshal to report non-insurable buildings.

1935. Cited in *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 P. (2d) 624, holding sections 173.2 et seq., unconstitutional as to cities and towns.

173.21. Premiums earned under state fire insurance act of 1935—collection from school districts and counties. The state auditor and ex-officio commissioner of insurance who was charged with the writing of policies and collecting premiums thereon under the state insurance act, chapter 179, session laws of 1935 [173.2-173.20], repealed by referendum No. 37 in November, 1936, and proclaimed so repealed by the governor, December 2, 1936, is hereby authorized and directed to collect any premiums earned on such policies written during the time the said insurance law was in effect. The state auditor and ex-officio commissioner of insurance shall bill each school district or county which made application for insurance under the law, and for which application, a policy was written and placed in effect for the amount of premium earned during the life of the policy on a short rate

basis. If said school district or county shall disregard such bill or notice to pay, and neglect or refuse to pay, then the state auditor and ex-officio commissioner of insurance shall certify such amount as unpaid, in the case of school districts, to the superintendent of public instruction and the state treasurer, and on the next distribution to said school district of moneys from the state common school equalization fund, or public school general fund, the amount so due the state insurance fund shall be withheld from any amounts due or to become due to said district and placed to the credit of the state insurance premium fund. In the case of counties, if the payment of the amount due is not made upon request, then the state auditor and ex-officio insurance commissioner shall certify the amount due and unpaid, to the state board of equalization and the state treasurer, and the amount so due shall be withheld from any payments due said counties from any funds that may come into the possession of the said board of equalization or state treasurer for distribution to said county and placed to the credit of the state insurance premium fund. [L. '39, Ch. 165, § 1. Approved and in effect March 15, 1939.]

173.22. Same — receipts — disposition. All moneys received by the state auditor and ex-officio commissioner of insurance for payment of premiums and all funds withheld as provided above shall be placed in the state treasury to the credit of the state insurance premium fund account. [L. '39, Ch. 165, § 2. Approved and in effect March 15, 1939.]

173.23. Unearned premiums—refunds—payment. The state auditor and ex-officio commissioner of insurance shall determine the amounts due and payable to various school districts and counties that paid premiums for insurance policies written under the above state insurance act. He shall compute such amounts on a short rate basis for the term the insurance was not in effect. He shall certify these amounts to the state board of examiners and the state board of examiners is hereby instructed and directed to refund, by state warrant, to the counties and school districts such amounts as are so certified, from the state insurance premium fund. The board of examiners shall approve for payment claims for such refunds in the order in which such claims are presented, and as funds accumulate in the state insurance premium fund from collections made by the state auditor and ex-officio commissioner of insurance. [L. '39, Ch. 165, § 3. Approved and in effect March 15, 1939.]

173.24. Premiums and refunds — computation—set-offs—certification. The state auditor and ex-officio commissioner of insurance shall

compute premiums and refunds due on a short rate basis. In case partial payments have been made by any political unit of the state, or in case several policies have been issued for one such political unit and some of the premiums have been paid on such policy and others are still unpaid, then he shall offset and certify the net amount due the state insurance premium fund or other political unit as the case may be. [L. '39, Ch. 165, § 4. Approved and in effect March 15, 1939.]

173.25. Unpaid premiums on state-owned property—payment—approval of board of examiners—credits received from reinsurance company—source of payment. In order that the state insurance premium fund may be reimbursed for unpaid premiums on state owned property insured under chapter 179, session laws of 1935, the board of examiners shall approve for payment the amount owing as certified to it by the state auditor and ex-officio insurance commissioner, and in addition the amount of credit received from the reinsurance company December 2, 1936, to apply on an insurance policy covering state property, said claim or claims to be paid from the current appropriations made for insurance of state property. [L. '39, Ch. 165, § 5. Approved and in effect March 15, 1939.]

Section 6 is partial invalidity saving clause. Section 7 repeals conflicting laws.

CHAPTER 20

THE STATE TREASURER

Section

182.1. State surplus cash—investment in state registered warrants or United States treasury certificates—records required—list to be filed by treasurer.

191.2. Apportionment of money to counties and expenditure thereof—county treasurers' duties—for what money expended—earned money—apportionment.

191.3. Effective date and application of act.

182.1. State surplus cash—investment in state registered warrants or United States treasury certificates—records required—list to be filed by treasurer. The state depository board may in its discretion by resolution duly adopted and entered upon the minutes of said board authorize and direct the state treasurer to invest any surplus cash in his office in registered warrants of the state of Montana, and/or treasury certificates of the federal government. All warrants purchased shall bear no interest. All warrants purchased shall be entered in an investment register and shall show the number and amount of all warrants.

All treasury certificates purchased shall be entered in an investment register which shall be a solid bound book with numbered pages and shall show the name and number of the treasury certificates, the date of purchase, the date sold, the face amount of the certificates, the amount of interest accrued at the time of sale and the total amount of the certificate and interest.

At the time of purchase, sale or redemption of any warrant or warrants, certificate or certificates under the provisions of this act, the treasurer shall file with the depository board, and also the state examiner, a detailed list of the warrants and certificates so purchased, sold or redeemed, together with interest thereon, and all interest received as a result of such investment shall be credited to the general fund of the state of Montana. [L. '37, Ch. 81, § 1, amending R. C. M. 1935, § 182.1. Approved and in effect March 3, 1937.]

Section 2 repeals conflicting laws.

191.2. Apportionment of money to counties and expenditure thereof—county treasurers' duties—for what money expended—earned money—apportionment. (1) It shall be the duty of the state treasurer to properly apportion and allocate all moneys received from the treasurer of the United States as provided for in section ten (10) of the Taylor grazing act approved June 28, 1934, and as amended June 26, 1936, to the county treasurers, and to furnish to each county treasurer together with the warrant to said county, a statement showing what portion of the moneys evidenced by said warrant was earned under the provisions of section three (3) of said Taylor grazing act (by grazing districts) and/or what portion of said moneys was earned under section fifteen (15) of said Taylor grazing act (leases of isolated tracts).

(2) It shall be the duty of the county treasurers to allocate the funds received under the provisions of section ten (10) of the Taylor grazing act as follows:

a. The moneys earned under section three (3) thereof (by grazing districts) to a fund to be designated as a special grazing fund, which fund shall be paid on warrants of authority issued by the district advisory board of the Taylor grazing act when signed by the chairman and secretary of said district advisory board.

The funds comprising said special grazing fund shall be expended only for range improvements such as fences, reservoirs, wells, and for such other range improvements as the district advisory board may approve. Before any improvements herein provided for can be made, or any money expended, such improve-

ments shall be approved by the district advisory board and a record of approval of such improvements shall be spread upon the minute records of the board, and

b. Of the moneys earned under section fifteen (15) thereof (by leases of isolated tracts).

1. If said county or any portion thereof is embraced within a grazing district created under the provisions of the Taylor grazing act;

a. Fifty per cent. (50%) thereof to the special grazing fund and to be expended in the same manner as hereinbefore provided for moneys earned under section three (3) of the said Taylor grazing act, and

b. Fifty per cent. (50%) thereof to the common school fund of said county.

2. If said county, in whole or in part is not embraced within such a grazing district;

a. Fifty per cent. (50%) thereof to the general fund of said county, and

b. Fifty per cent. (50%) thereof to the common school fund of said county. [L. '39, Ch. 102, § 1, amending R. C. M. 1935, § 191.2, as amended by L. '37, Ch. 55, § 1. Approved and in effect March 3, 1939.

Section 3 repeals conflicting laws.

191.3. Effective date and application of act. This act shall be in full force and effect from and after its passage and approval and its provisions shall apply to all funds now in the hands of county treasurers or hereafter to be received by county treasurers under, and by virtue of, the provisions of the Taylor grazing act. [L. '39, Ch. 102, § 2, amending R. C. M. 1935, § 191.3, as amended by L. '37, Ch. 55, § 1. Approved and in effect March 3, 1939.

Section 3 repeals conflicting laws.

CHAPTER 23

THE STATE EXAMINER

Section

214. Access to accounts of public officers—actions to compel—suspension of public officers—grounds—audit—completion—procedure thereafter—ousted officer—quo warranto against successor.
215. Examination of accounts of cities, towns and school districts of the first and second class—option of trustees of school district—fee—accountant.
219. Assistants, deputies and clerks—salaries.

214. Access to accounts of public officers—actions to compel—suspension of public officers—grounds—audit—completion—procedure thereafter—ousted officer—quo warranto against successor. The state examiner shall

have full power and authority to count the cash, verify the bank accounts and verify any and all accounts of any public officer whose accounts he is examining pursuant to law.

Any state, county, city, town or school district officer who shall refuse to accord the state examiner access during an examination of such officer's accounts, to his cash, bank accounts, or any of the papers, vouchers or records of his office, or if the state examiner, after counting the cash and verifying the bank accounts of such officer shall find that a shortage exists in the accounts of said officer, the state examiner shall forthwith file a verified preliminary report showing the refusal of such officer to accord to him access to the examination of such accounts, cash, bank accounts, papers, vouchers or records, or the existence of such shortage, and the amount or approximate amount thereof with the secretary of state if such officer shall be a state officer, with the board of county commissioners of the proper county if the officer be a county or school district officer, and with the city or town council if the officer be a city or town officer; upon the filing of such verified statement, such officer shall immediately be suspended from the duties and emoluments of his office, and the governor, in the case of a state officer, and the board of county commissioners of the county in case of county or school district officers, and the city or town council in case of a city or town officer, shall appoint some qualified person to such office, pending the completion of such examination.

Upon the completion of the audit or examination of the accounts of such officer by the state examiner, if a shortage shall be found to have existed in the accounts of such officer on the date of the commencement of such examination, the state examiner shall file, in the office of the secretary of state in case of a state officer, and the board of county commissioners of the proper county in the case of a county or school district officer, and with the city or town council in the case of a city or town officer, a verified final report of the examination or audit, showing such shortage, whereupon the right of such officer to such office shall be forfeited, and such office shall thereupon become vacant as of the date of the suspension of such officer as hereinabove provided, and the person appointed to such office upon the suspension of said officer shall hold said office until the election and qualification of his successor, as provided by law.

Any officer whose right to office has been forfeited may, within ten days after the filing of the state examiner's final report or audit as herein provided, institute in the district court of the proper judicial district, a pro-

ceeding in quo warranto to test the right of his successor to hold such office, and the accuracy of the said final report and audit of the state examiner. [L. '39, Ch. 179, § 1, amending R. C. M. 1935, § 214. Approved and in effect March 17, 1939.

Section 2 repeals conflicting laws.

215. Examination of accounts of cities, towns and school districts of the first and second class—option of trustees of school district—fee—accountant. The state examiner in addition to the duties now imposed upon his office, shall have the power and authority and it shall be his duty, to make at least one examination each year of the books and accounts of all incorporated cities and towns and that it shall be his duty to examine the books and accounts of all school districts of the first and second class, in like manner as is now required by law for the examination of the books and accounts of state and county officers, provided that such examination shall be optional with the trustees of such district and shall be done only on their request. Provided, however, that the trustees of any school district must, during the month of June of each calendar year, notify the state examiner if such examination will be required, in which event it shall be the duty of the state examiner to make an examination of such school district during the fiscal year following receipt of said notice. If such school district request such examination a fee of fifteen dollars (\$15.00) per day per man together with actual transportation expense must be paid by such district into the state treasury and the state treasurer shall accredit such payment to the special examiners fund. An examination may be made of the accounts and records of any school district by a qualified certified public accountant of the state of Montana when deemed advisable by the board of trustees. [L. '37, Ch. 164, § 1, amending R. C. M. 1935, § 215. Approved and in effect March 16, 1937.

Section 2 repeals conflicting laws.

219. Assistants, deputies and clerks—salaries. The state examiner shall be allowed one first assistant at a salary of three thousand dollars (\$3,000.00) per year, and not to exceed six (6) deputy examiners, each at a salary of not to exceed twenty-seven hundred dollars (\$2700.00) per year, and one clerk at a salary of fifteen hundred dollars (\$1500.00) per year. [L. '39, Ch. 180, § 1, amending R. C. M. 1935, § 219. Approved and in effect March 17, 1939.

Section 2 repeals conflicting laws.

CHAPTER 25

THE BOARD OF EXAMINERS—STATE PRINTING CONTRACTS AND SUPPLIES

Section

- 269a. State institutions, boards, commissions, etc.—expenditures in excess of appropriations—board of examiners—powers and duties.
- 269b. Emergency—expenditures in excess of appropriation—permission of board of examiners—limitations—procedure—board's report to legislature—deficiency bill.
- 269c. State institutions, boards, commissions, etc.—inventory to be taken by board of examiners—deductions from new appropriation—expenditures.
- 269d. Violations of act—penalties—complaints of taxpayer.
- 273. Repealed.
- 273.1. Powers concerning employment of assistants to civil executive officers—appointment—governor's approval—expenses of office.
- 273.2. Removal of assistants—power of governor—procedure.
- 273.3. Assistants in office—approval of governor—discharge.
- 273.4. Repeals.
- 275. Repealed.
- 283.2. Capitol building bonds—refunding bonds—power of board of examiners to issue.
- 283.3. Capitol refunding bonds—interest rate—other terms.
- 283.4. Same—taxes to be levied for payment.
- 283.5. Same—sale of bonds.
- 283.6. Same—registration of bonds.
- 283.7. Same—expenses of issuance—appropriation.
- 283.8. Same—budget act not controlling.

269a. State institutions, boards, commissions, etc.—expenditures in excess of appropriations—board of examiners—powers and duties. It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state, or for any officer, department, board, commission or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation, or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the income provided for such year, or in excess of such income as decreased by the state board of examiners, under and in accordance with the provisions of section 3 of this act [269c], for such year, or for the state board of examiners, or any supervisory board or authority either directly or indirectly to authorize, direct or order any such institution, officer, department, board, commission or bureau to increase any expenditures, except as hereinafter provided, and it shall be and is hereby made the duty of any and all of such

institutions, officers, departments, boards, commissions and bureaus to keep such expenditures, obligations and liabilities within the amount of such income. [L. '37, Ch. 40, § 1. Approved and in effect February 23, 1937.]

Section 5 repeals conflicting laws.

1938. No reversion or lapse of an appropriation occurs until after the expiration of the time for which appropriated, and then the unexpended portion remaining reverts to the fund from which it is set apart. Thus the unexpended portion for the first year is available for use of the public welfare board as a part of the appropriation of the second year. State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677.

1938. The object of these sections (Ch. 40 of Laws of 1937) is to prevent deficiency appropriations, while the object of § 304 is to declare when an appropriation reverts, State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677, holding that §§ 269a-269d does not repeal § 304, as the objects and purposes of the two statutes are not the same.

269b. Emergency—expenditures in excess of appropriation—permission of board of examiners—limitations—procedure—board's report to legislature—deficiency bill. If it shall at any time appear to the state board of examiners that due to an unanticipated increase in the number of inmates or patients of any penal, custodial or charitable institution, or that due to any unforeseen and unanticipated emergency in the case of such institutions, or that due to any unforeseen and unanticipated emergency in the case of any other state institution, educational institution, department, board, commission or bureau, the amount appropriated for the maintenance and operation of any state institution, educational institution, department, board, commission or bureau, with all other income of the institution, if any, will be insufficient for such purposes during the year for which the appropriation was made, on written application to such state board of examiners, setting forth in detail the reasons therefor, said board of examiners, by an order made and entered at length, with such application, in its minutes, may authorize an expenditure to be made during such year for such purposes in such an amount in excess of such income for said year as said board of examiners may deem necessary and required, and the board, managerial staff or other authority in charge of any state institution, educational institution, department, board, commission or bureau, may expend such amount, and no more, for such purposes during such year; provided that any increase in expenditure so authorized for any penal, custodial or charitable institution due to increase in number of inmates or patients, shall not exceed the cost per inmate day as set forth in the last preceding legislative

budget for each such institution. Said state board of examiners shall report to the next legislative assembly the amount expended or indebtedness or liability incurred under such authority granted by it and request that a deficiency appropriation bill be passed to take care of and pay the same. [L. '37, Ch. 40, § 2. Approved and in effect February 23, 1937.]

Section 5 repeals conflicting laws.

1938. The object of these sections (Ch. 40 of Laws of 1937) is to prevent deficiency appropriations, while the object of § 304 is to declare when an appropriation reverts, State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677, holding that §§ 269a-269d does not repeal § 304, as the objects and purposes of the two statutes are not the same.

269c. State institutions, boards, commissions, etc.—inventory to be taken by board of examiners—deductions from new appropriation—expenditures. Prior to the beginning of each fiscal year the board of examiners must cause an inspection and inventory to be made of the stocks of supplies, materials, and articles on hand at or in or at the disposition of such institution, board, bureau, commission or department and said board must decrease the expenditures for the ensuing fiscal year by the amount or value of such supplies, materials, and articles so on hand or available, capable of utilization in such ensuing period and where further quantities thereof, or of substitutes therefor, will not be required, said decrease shall be effective upon the entry of order therefor on the minutes of the said board of examiners, and written notice thereof to the institution, department, bureau, board, commission, office, officer or employee affected by such order of said board; provided, that the aggregate inventoried value of such stocks of supplies, materials, and articles on hand at or in or at the disposition of any such institution, board, bureau, commission or department as of June 30, 1936, as shown by the records of the state purchasing agent, shall not be deducted from appropriations available for such institutions. [L. '37, Ch. 40, § 3. Approved and in effect February 23, 1937.]

Section 5 repeals conflicting laws.

1938. The object of these sections (Ch. 40 of Laws of 1937) is to prevent deficiency appropriations, while the object of § 304 is to declare when an appropriation reverts, State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677, holding that §§ 269a-269d does not repeal § 304, as the objects and purposes of the two statutes are not the same.

269d. Violations of act—penalties—complaint of taxpayer. Any authority or member of a board of trustees or any person, officer or employee violating the provisions of section 1 [269a] or section 2 [269b] of this act, shall be guilty of a misdemeanor, and upon con-

viction thereof shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment; and in addition thereto, said authority, member, person, officer or employee, shall be personally liable, and the surety or sureties on his bond shall also be liable, to the state of Montana for the amount of the excess thus unlawfully expended, and said authority, member, person or officer shall be guilty of misfeasance in office, and such employee shall be guilty of wrong doing and each shall be subject to removal from office or from such employment, upon complaint of any taxpayer, filed in a district court of this state, and upon proof of violation of this act, in accordance with law. [L. '37, Ch. 40, § 4. Approved and in effect February 23, 1937.]

Section 5 repeals conflicting laws.

1938. The object of these sections (Ch. 40 of Laws of 1937) is to prevent deficiency appropriations, while the object of § 304 is to declare when an appropriation reverts, State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677, holding that §§ 269a-269d does not repeal § 304, as the objects and purposes of the two statutes are not the same.

273. Repealed. See § 273.4, below.

273.1. Powers concerning employment of assistants to civil executive officers — appointment—governor's approval—expenses of office. Every civil executive state officer, board, commission, bureau, department or authority of any kind appointed by the governor shall not appoint any assistants, deputy, agent, attorney, administrator, engineer, expert, clerk, accountant, stenographer, or executive attache, nor shall any such civil executive state office, board, commission, bureau, department or authority fix or designate the number, compensation, term or tenure of office of any such assistant, deputy, agent, attorney, administrator, engineer, expert, clerk, accountant, stenographer, or executive attache, without first having the written approval of the governor, which approval shall be filed with the clerk of the state board of examiners; provided, however, that the provisions of this act shall not apply to nor affect the assistants, deputies, agents, attorneys, administrators, engineers, experts, clerks, accountants, stenographers, or other executive attaches whose term and tenure of office, duties and compensation are now fixed by law; and provided further that the total expenses of any such office, board, commission, bureau, department or authority of any kind shall not exceed in the aggregate during any fiscal year the amount appropriated by the legislature for such fiscal year for

such office, board, commission, bureau, department or authority of any kind. [L. '37, Ch. 5, § 1. Approved and in effect February 8, 1937.]

1938. No reversion or lapse of an appropriation occurs until after the expiration of the time for which appropriated, and then the unexpended portion remaining reverts to the fund from which it is set apart. Thus the unexpended portion for the first year is available for use of the public welfare board as a part of the appropriation of the second year. State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677.

1938. The object of the provision in this section is to prevent deficiency appropriations, and makes no mention of reversions of appropriations, thus its object is different from that of section 304, which is a general statute applying to all appropriations, where as sections 273.1-273.3 (Ch. 5 of the Laws of 1937) applies to none of the appropriations for elective state officers or boards. An unexpended portion of an appropriation made for the first year of a biennium, when section 304 is applied, becomes a part and parcel of the appropriation for the second year of that period. State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677.

273.2. Removal of assistants — power of governor — procedure. Whenever, in his judgment, the governor deems it for the best interest of the service and of the state that any such assistant, deputy, agent, attorney, administrator, engineer, expert, clerk, accountant, stenographer, or executive attache allowed by this act, be removed, or the office or position which he holds be discontinued, the governor may make such removal, or discontinue such office or position, and the filing of his proclamation thereof with the secretary of the state board of examiners, shall effect such removal or discontinuance. [L. '37, Ch. 5, § 2. Approved and in effect February 8, 1937.]

273.3. Assistants in office — approval of governor — discharge. Upon the passage and approval of this act every civil executive state officer, board, commission, bureau, department or authority of any kind, appointed by the governor, shall report to him the names of and the duties assigned to every such assistant, deputy, agent, attorney, administrator, engineer, expert, clerk, accountant, stenographer, or executive attache, and if the governor does not approve of their employment and appointment within thirty days thereafter and file such approval in writing with the secretary of the state board of examiners, their employment and appointment shall be terminated and discontinued. [L. '37, Ch. 5, § 3. Approved and in effect February 8, 1937.]

273.4 Repeals. Sections 273 and 275 of the revised codes of Montana, 1935, and all other acts and parts of acts in conflict herewith are hereby repealed. [L. '37, Ch. 5, § 4. Approved and in effect February 8, 1937.]

275. Repealed. See § 273.4, above.

283.1. Preference of Montana printers and binders in publishing decisions, session laws and codes.

1937. ✓ Sections 283.1 and 381, being on a parity, must be construed, if possible, so that both may stand. State ex rel. Helena Allied Printing Council v. Mitchell, 105 Mont. 326, 74 P. (2d) 417.

1937. ✓ A publisher, by reason of merely bidding on one part of a proposal to publish the supreme court reports, did not submit what constituted a bid. State ex rel. Helena Allied Printing Council v. Mitchell, 105 Mont. 326, 74 P. (2d) 417.

1937. ✓ Section 283.1 did not repeal section 381. State ex rel. Helena Allied Printing Council v. Mitchell, 105 Mont. 326, 74 P. (2d) 417.

283.2. Capitol building bonds — refunding bonds — power of board of examiners to issue. The state board of examiners is hereby authorized and empowered to issue and sell bonds of the state of Montana, payable in lawful money of the United States, in an amount sufficient to pay, refund and redeem all capitol building bonds heretofore issued by the state of Montana and held by the state board of land commissioners as investments of trust funds under the administration of said board. The proceeds from such sale shall be deposited in the treasury of the state of Montana and credited to the "capitol building refunding bonds sinking and interest fund" and shall be used exclusively for the payment of said outstanding capitol building bonds and interest thereon. [L. '39, Ch. 133, § 1. Approved and in effect March 9, 1939.]

283.3. Capitol refunding bonds — interest rate — other terms. Said bonds shall bear interest at a rate not exceeding four per centum (4%) per annum, payable semi-annually. The bonds shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe and shall be payable over such period of years, not exceeding twenty (20), that the said board of examiners may specify. All bonds shall be optional and redeemable five (5) years after the date of issue and on any interest payment date thereafter at the option of the state board of examiners. The said bonds shall be in such denominations and form and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, the secretary of state and the members of said board, and shall be payable at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signatures of the members of said board. [L. '39, Ch. 133, § 2. Approved and in effect March 9, 1939.]

283.4. Same — taxes to be levied for payment. There shall be and there is hereby levied annually upon all property in the state of Montana subject to taxation, an ad valorem tax on each dollar of the taxable valuation of such property, sufficient in amount to pay the principal and interest on said bonds as the same become due and payable, which tax when collected shall be placed by the state treasurer in a fund to be known as the "capitol building refunding bonds sinking and interest fund," and used for the payment of the principal and interest of such bonds and for no other purpose; which tax shall be computed against the different classes of taxable property on the percentage value thereof for taxation purposes as such percentage may be provided by law. All of the income from all lands granted by the congress of the United States to the state of Montana for public buildings at the state capitol shall be placed in the "capitol building refunding bonds sinking and interest fund" to be applied in payment of the principal and interest of such bonds. The state board of equalization shall hereafter and between the first and second Monday in August of each year, ascertain and determine the amount required to pay the principal and interest on said bonds becoming due during the then current fiscal year and the amount of money standing to the credit of the "capitol building refunding bonds sinking and interest fund" and applicable to the payment of interest and principal of said bonds during the then current fiscal year, and after deducting such amount from the amount required to be paid as such principal and interest during the then current fiscal year, shall calculate, determine and fix a rate of tax levy sufficient to produce the balance of the amount, if any, required to pay such principal and interest becoming due and payable during the then current fiscal year. The state board of equalization shall annually and before the second Monday in August, certify such tax levy as calculated and determined by such board to the county clerks of the several counties of the state, and such county clerks shall compute such taxes and enter the same on the assessment books, and such taxes shall be collected and transmitted by the county treasurer in the same manner as other taxes for state purposes are collected and transmitted. [L. '39, Ch. 133, § 3. Approved and in effect March 9, 1939.]

283.5. Same — sale of bonds. The said bonds shall be sold by the state board of examiners at such time, in such manner and in such amounts as the said board shall deem for the best interests of the state in carrying out the purpose for which the issuance of the said bonds is authorized, provided that such

bonds shall not be sold for less than par plus accrued interest to date of delivery of the bonds. The bonds or any part thereof may be exchanged for outstanding capitol building bonds and in such case the state board of examiners shall fix the rate of interest which the refunding bonds shall bear, not exceeding four per centum (4%) per annum, and each institution or fund holding any part of the said capitol building bonds shall receive refunding bonds equal in amount to the par value of the outstanding bonds plus the interest accrued thereon up to the date of the new bonds. If the refunding bonds are offered for sale they shall be sold at open competitive bidding. [L. '39, Ch. 133, § 4. Approved and in effect March 9, 1939.]

283.6. Same—registration of bonds. Each of said refunding bonds shall be registered before delivery with the state treasurer of the state of Montana who shall keep accurate accounts of payments of interest and principal upon said bonds. [L. '39, Ch. 133, § 5. Approved and in effect March 9, 1939.]

283.7. Same—expenses of issuance—appropriation. There is hereby appropriated from the general fund of the state of Montana, not otherwise appropriated, a sum not exceeding fifteen hundred dollars (\$1,500.00) for the purpose of paying the expense incident to the issuance and sale of said bonds. [L. '39, Ch. 133, § 6. Approved and in effect March 9, 1939.]

283.8. Same—budget act not controlling. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act. [L. '39, Ch. 133, § 7. Approved and in effect March 9, 1939.]

CHAPTER 26

THE STATE PURCHASING DEPARTMENT

Section

287. Authority to purchase.

287. Authority to purchase. An estimate or requisition presented by the department, commission, board or state official in control of the appropriation or fund against which such contract or purchase is to be charged, must be approved by the state purchasing agent, and this shall be full authority for any contract and any purchase made by the state purchasing department; provided, however, that no purchase shall be made by the state purchasing department of any furniture, fixtures, apparatus or equipment for any department, board, commission or office until the estimate or requisition for the purchase thereof

has been submitted to the state board of examiners and an order made by such board authorizing the purchase thereof. [L. '39, Ch. 51, § 1, amending R. C. M. 1935, § 287. Approved and in effect February 23, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 27

THE BUDGET SYSTEM

Section

303. Printing and distribution of budget.

303. Printing and distribution of budget. The state board of examiners shall have printed before the tenth day of each session of the legislative assembly, the budgets provided for herein, and shall distribute copies of the same to the members of the legislative assembly, to all the state departments, institutions and agencies, and two copies to the Library of Congress at Washington. [L. '37, Ch. 46, § 2, amending R. C. M. 1935, § 303. Approved and in effect February 23, 1937.]

Section 5 repeals conflicting laws.

304. Disposal unexpended appropriations.

1938. No reversion or lapse of an appropriation occurs until after the expiration of the time for which appropriated, and then the unexpended portion remaining reverts to the fund from which it is set apart. Thus the unexpended portion for the first year is available for use of the public welfare board as a part of the appropriation of the second year. State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677.

1938. The object of this section is to declare when an appropriation reverts, State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677, holding that it was not repealed by chapter 40 of the Laws of 1937 (§§ 269a-269d), nor by Ch. 5 of that section (§§ 273.1-3).

CHAPTER 31

STATE BOARD OF CHARITIES AND REFORM

Section

325-335. Repealed.

325-335. Repealed. This entire chapter was repealed by chapter 82 of the Laws of 1937. See § 349A.75.

CHAPTER 32

MONTANA RELIEF COMMISSION

Section

335.1-335.17. Repealed.

335.1-335.17. Repealed. This entire chapter was repealed by chapter 82 of the Laws of 1937. See § 349A.75.

335.1.- Montana relief commission—members—qualifications—purpose.

1936. A duly elected, qualified, and acting state senator of the state of Montana was ineligible to appointment as a relief commissioner under Chapter 109 of the Laws of 1935, and was ineligible to hold the office, exercise its powers, or collect its emoluments. State ex rel. Nagle v. Kelsey, 102 Mont. 8, 55 P. (2d) 685.

1936. In a proceeding by the attorney general by quo warranto to oust a state senator from the office of relief commissioner under Chapter 109 of the Laws of 1935, the supreme court was only interested in ascertaining if the act was in accordance with the powers and restrictions conferred and reposed by the people themselves, by the terms of the constitution; holding that it is only when acts are clearly without and in contravention of such powers that the court will move to nullify them. State ex rel. Nagle v. Kelsey, 102 Mont. 8, 55 P. (2d) 685.

1936. The purposes of Chapter 109 of the Laws of 1935 were to aid directly in the relief of the adverse conditions enumerated, and to create some responsible legal agency of the state endowed with the power, discretion, and capacity to cooperate with and contract with the federal government in all matters germane to the general relief purposes designated in the act, and to bind the state in that behalf. State ex rel. Nagle v. Kelsey, 102 Mont. 8, 55 P. (2d) 685.

CHAPTER 32A

EMERGENCY RELIEF EMPLOYMENT

Section

- 335.17-1. Emergency relief employment—use of federal and state funds—cooperation with federal government—public policy.
- 335.17-2. Relief projects—political subdivisions of state—furnishing materials, etc.—authority—issue of warrants—payment—when to be used.
- 335.17-3. Emergency relief fund—creation—source—use—anticipatory warrants.
- 335.17-4. Political subdivisions governing bodies—tax levies—limitations—petition opposing projects—electors—required—notice of projects—publication—warrants.
- 335.17-5. State board of land commissioners—warrants—purchase—certification.
- 335.17-6. Provisions of act severable—partial invalidity saving clause.
- 335.17-7. Emergency clause—not subject to referendum—expiry of act—when effective.

335.17-1. Emergency relief employment—use of federal and state funds—cooperation with federal government—public policy. Whereas the recent unprecedented drought in many sections of Montana, together with the nationwide economic depression, have brought about an acute employment situation with respect to the citizens of Montana, the alleviation of which requires the immediate inauguration and aggressive prosecution of an efficient and economical program of employment which will take advantage of all available federal, state and other funds promptly, to the end that

employment of Montana citizens may be augmented to the greatest possible degree, that all federal funds may be used, and that citizens of this state may be removed from public relief rolls and be given gainful employment.

It is hereby declared to be a public policy that this state and all political subdivisions thereof, cooperate with any agency of the federal government in and for the construction, operation and maintenance of any plans and projects in aid of which such federal agency is about to or has expended funds furnished by the federal government, intended for a useful purpose, and calculated to furnish employment and assistance to the needy citizens of this state. [L. '37, Ch. 85, § 1. Approved and in effect March 6, 1937.]

1938. Relief warrants issued before the expiry of this act, for a project already commenced, and the levy of taxes to pay them, made after such expiry, held valid in Kraus v. Riley, 107 Mont. 116, 80 P. (2d) 864.

1938. This section was not violated by the water conservation board by the issuance of revenue bonds to take up relief emergency warrants issued by a county to raise funds for the construction of a reservoir to store and furnish water for the irrigation of lands of stockholders of a water users' association where the bonds were secured solely by such waterworks and revenue derived from the operation thereof. Kraus v. Riley, 107 Mont. 116, 80 P. (2d) 864.

335.17-2. Relief projects—political subdivisions of state—furnishing materials, etc.—authority—issue of warrants—payment—when to be used. In order to fully and completely carry out a state-wide policy of cooperation by the political subdivisions of the state with any federal agency in the construction, operation and maintenance of any projects sponsored by the state or any county, school district or municipal corporation, as political subdivisions of this state, the county commissioners of any county, the school trustees of any organized school district or the governing board or body of any municipal corporation, is hereby authorized to furnish such materials, equipment, rentals, supplies, and supervision as may be required by any federal agency to be furnished by such political subdivision and the commissioners of the county, the trustees of any organized school district or the governing board or body of any municipality, when sufficient funds are not available, are hereby authorized to issue warrants to be designated relief warrants in payment of such materials, equipment, rentals, supplies, or supervision, payable from the relief fund hereinafter provided when there is no other available fund from which said warrant may be made payable in pursuance of law or payable. This measure contemplates that as in the past, political sub-

divisions will continue to sponsor projects without recourse to the provisions of this emergency measure where the same can be reasonably so sponsored and that funds available to the political subdivision through license taxes or from other sources, and which may be reasonably used for the purpose shall be used by the political subdivision to retire warrants issued under the provisions of this act, and that property taxes as herein authorized to be levied will not be levied when funds to retire the same are obtainable from other sources. [L. '37, Ch. 85, § 2. Approved and in effect March 6, 1937.]

1938. The state teachers' retirement board may invest funds in county relief warrants issued before the expiry of the act authorizing them (§ 335.17-1 et seq.) payable from taxes levied after the expiry of such act. *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

1938. This section is not violated by § 335.17-2 or § 335.17-4, or any other part of the act, because it does not levy a tax. It simply authorizes the political subdivision issuing relief warrants to do so and fix the maximum rate. The amount of the levy is left with the local authorities, as is also the question of whether any warrants will be issued necessitating any levy. *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

1938. Relief warrants issued before the expiry of this act for a project already commenced, and the levy of taxes to pay them, made after such expiry, held valid in *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

1938. The state teachers' retirement board may invest funds in county relief warrants issued before the expiry of the act authorizing them (§§ 335.17-1 et seq.) payable from taxes levied after the expiry of such act. *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

335.17-3. Emergency relief fund—creation—source—use—anticipatory warrants. There is hereby created in each county, school district and municipal corporation, an emergency fund to be known as the "emergency relief fund," which fund shall consist of all monies received by any such political subdivision of the state in the manner hereinafter provided. The monies collected and payable into such fund shall be used for the sole and only purpose of redeeming outstanding warrants legally issued, payable out of such fund. The governing board or body of any such political subdivision of the state is hereby authorized to issue warrants payable out of said emergency relief fund, in anticipation thereafter of the receipt of such monies to be deposited in such fund as herein provided. [L. '37, Ch. 85, § 3. Approved and in effect March 6, 1937.]

335.17-4. Political subdivisions governing bodies—tax levies—limitations—petition opposing projects—electors—required—notice of projects—publication—warrants. The governing board or body of any such political sub-

division is hereby empowered to levy annually a tax of not to exceed one-half of one per centum ($\frac{1}{2}\%$) of the taxable value of the property upon which taxes are levied, collected and paid within such political subdivision to be ascertained as provided by law provided that the total tax levied under this act against any property of any political subdivision shall not exceed one per centum of the taxable value thereof:

Provided, however, that no governing body of any political subdivision shall be authorized under this act to issue warrants to furnish materials, equipment, rental, supplies or supervision in connection with any project as herein contemplated if there shall be filed with the said governing body previous to the issuance of said warrants a petition opposing the construction of the said project containing the names of as many as ten per cent of the qualified electors voting at the last general election within the specific political subdivision sponsoring the project:

Provided further that any governing body proposing to issue emergency relief warrants to sponsor any project as herein contemplated shall cause to be published in some newspaper of general circulation within the said political subdivision at least thirty days previous to the date of the proposed issuance of the said warrants a notice setting forth the intention of the said political subdivision to issue such warrants and describing the purposes for which the same are to be issued. Any limitation of the levy of taxes now provided by law, shall not apply in any political subdivision of the state when, by reason of an act of God, disaster, catastrophe, or accident, there exists an emergency and relief warrants may be issued and negotiated to provide for the employment of needy citizens for the relief of such emergency, in accordance with the provisions of this act; provided that in any political subdivision wherein the funds necessary to liquidate warrants issued in accordance with this act may be paid out of any funds of such political subdivision other than those accumulated in the "emergency relief fund," then in such event, such payments shall be made out of such other funds, provided further that if and when all outstanding warrants issued and payable out of the emergency relief fund have been paid then the authority to levy the tax herein provided for shall cease to exist. [L. '37, Ch. '85, § 4. Approved and in effect March 6, 1937.]

1938. Relief warrants issued before the expiry of this act for a project already commenced, and the levy of taxes to pay them, made after such expiry, held valid in *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

335.17-5. State board of land commissioners — warrants — purchase — certification. The state board of land commissioners is hereby authorized at their discretion to purchase county, school district or municipal emergency relief warrants lawfully issued in pursuance of this act, provided that prior to the purchase of any such county, school district or municipal emergency relief warrants so issued in pursuance of the provisions of this act, the state board of land commissioners shall require a certificate signed by the secretary of the state water conservation board, that the proposed projects for which material, equipment, rentals, and supplies or supervision are to be furnished from funds so provided are for permanent, useful and beneficial purposes and will furnish employment to needy citizens, residents within such political subdivision; provided that any such emergency relief warrants shall be duly issued and registered as in all respects of law required. [L. '37, Ch. 85, § 5. Approved and in effect March 6, 1937.]

1938. Under this section the state board of land commissioners had authority to purchase county relief warrants issued before the expiry of this act, payable from levy of taxes after such expiry, since such warrants were valid obligations of the issuing county. *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

335.17-6. Provisions of act severable — partial invalidity saving clause. The sections and provisions of this act are severable and are not matters of mutual essential inducement, and it is the intention to confer the whole or any part of the powers herein provided for, and if any section or provision or part thereof is for any reason held to be unconstitutional, void or inoperative, it is the intention that the remaining sections and provisions and parts thereof shall remain in full force and effect. [L. '37, Ch. 85, § 6. Approved and in effect March 6, 1937.]

335.17-7. Emergency clause — not subject to referendum — expiry of act — when effective. Because of the inability of thousands of citizens throughout the state to find employment and to support themselves and their families in the present depression, and because of serious crop failures resulting from unprecedented drought conditions, it is necessary to proceed immediately with the prosecution of projects authorized by the federal government in order to create employment and prevent irreparable injury to the people of the state. An emergency is hereby declared to exist, and this act shall not be subject to the referendum, and shall be in full force and effect from and after its passage and approval and shall continue in effect until March 15th, 1941, and thereafter shall be of

no force or effect. [L. '39, Ch. 209, § 7, amending L. '37, Ch. 85, § 7. Approved and in effect March 17, 1939.]

Section 2 repeals conflicting laws.

Note. By the amendatory act of L. '39, Ch. 209, § 1, to this section, the expiry date of the above act was advanced to March 15, 1941.

1938. Relief warrants issued before the expiry of this act, for a project already commenced, and the levy of taxes to pay them, made after such expiry, held valid in *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

CHAPTER 33

OLD AGE PENSIONS

Section

335.18-335.45. Repealed.

335.18-335.45. Repealed. [Chapter 82 of the Laws of 1937. See § 349A.75.]

335.25. Records and accounts.

Note. Suspension of section, see § 335.24-5.

Note. Purpose of act and construction, see § 335.24-4. Suspension of other acts, see § 335.24-5. Expiry date of act, see § 335.24-6.

335.26. Claims for reimbursement.

Note. Suspension of section, see § 335.24-5.

335.27. Approval of claims.

Note. Suspension of section, see § 335.24-5.

CHAPTER 34

STATE BUREAU OF CHILD AND ANIMAL PROTECTION

Section

336-347. Repealed.

336-347. Repealed. [L. '37, Ch. 82, Part VII, § III. See § 349A.76.]

CHAPTER 34A

PUBLIC WELFARE

PART I

To Establish A State Department of Public Welfare and County Departments of Public Welfare.

Section

349A.1. Creation of department of public welfare.

349A.2. Appointment of state board of public welfare—members and terms—qualifications—vacancies—oath—bond—chairman—officers—compensation—financial interest—expenses—fund payable from—books, property, and money—previous appropriations—obligations—orthopedic commission—bureau of child and animal protection.

Section

- 349A.3. Powers and duties of the state board—state administrator—salary—qualifications—bond—service and personnel—merit system—examinations—duty of board—of administrator—polices—funds—records—audit—accounting.
- 349A.4. Legal services—attorney general—additional counsel—compensation.
- 349A.5. Divisions of administration.
- 349A.6. Administrator—functions—biennial budget estimates—biennial reports—personnel—appointment—merit system.
- 349A.7. Authority and activities of the state department—public assistance—child welfare—private institutions—services to blind—county welfare—personnel standards—cooperation—agent of federal government—Indian assistance—ward Indian defined.
- 349A.8. State grants-in-aid—state department—authority—contributions of counties—enforcement of act and standards.
- 349A.9. County departments—establishment—combining counties—county welfare board—personnel—compensation—expenses.
- 349A.10. Powers and duties of the county board—personnel—assistant workers—supervision—reimbursement of county—field supervisors and auditors—recommendations—reports—salaries and expenses—source of payment—grants by county welfare board.
- 349A.11. Functions and activities of county department—local administration—county commissioners—tax levies—contributions by state—budget—mailing to administrator—county poor fund—restriction as to use.
- 349A.12. Right of appeal—applicant's appeal to state department—original jurisdiction—notice and hearing—finality of decisions of department.
- 349A.13. Right to hold property—powers of board—condemnation.
- 349A.14. Power to make contracts—with United States—intent of act—restrictions as to use of state funds.
- 349A.15. Fraudulent acts—obtaining public assistance.
- 349A.16. Approval or denial of signatures—on application.
- 349A.17. Revocation of assistance.
- 349A.18. Assistance not assignable—not subject to execution.
- 349A.19. Method of issuing assistance grants—checks—state department—reimbursement by county.
- 349A.20. Reports and records—county department's duty—state department's duty.
- 349A.21. Limitations of act—amendments and repeals—effect.

PART II

General Relief: To Provide Aid To the Unemployable Destitute and Those Made Destitute Through Lack of Employment and All Those In Need of Public Assistance Not Eligible or Otherwise Cared for Under Other Parts of This Act.

Section

- 349A.22. Administration—general relief.

Section

- 349A.23. Eligibility requirements for general relief—residence—need—aliens—interstate transients—institutional care—supplementary cash assistance.
- 349A.24. Equal consideration required.
- 349A.25. Right of appeal and hearing—complaints or grievances.
- 349A.26. Cash relief—disbursing orders—when work required.
- 349A.27. Medical aid and hospitalization—county commissioners to provide—osteopathic and chiropractic treatment—"medical" defined.
- 349A.28. Primary obligations of the board of county commissioners—tax levies and budgets—institutional care.
- 349A.29. Certification for relief employment—investigation of eligibility.
- 349A.30. Grants from state funds to counties—use thereof—emergency budget—county commissioners to adopt—audit—when required—aid for county commissioners—application.
- 349A.31. Application for relief—pauper's oath—form—who to furnish.
- 349A.32. Investigations of relief applications—temporary assistance.
- 349A.33. Granting of assistance—amount—form.
- 349A.34. Repealed.

PART III

To Provide for Old Age Assistance To Aged Persons In Need, In Conformity With Title I of the Federal Social Security Act of 1935, or As Amended.

Section

- 349A.35. Provision for administration—old age assistance—local—uniformity required—copies of act and blanks—state to furnish—rules—definition.
- 349A.36. Eligibility requirements for old age assistance—age—income—residence—inmate of public institution—property assignment—institutional care—need.
- 349A.37. Amount of assistance—standards—who to determine.
- 349A.38. Application for assistance—contents—inmate of institution.
- 349A.39. County share of participation—reimbursement.
- 349A.40. Investigation of applications—witnesses—subpoena—eligibility—amount of assistance—county to determine.
- 349A.41. Funeral expenses—source of payment.
- 349A.42. Assistance may be paid to guardian—appointment.
- 349A.43. Subsequent increase of income—duty of recipient—excess—return.
- 349A.44. Periodic review of assistance grants—change or withdrawal—suspension or revocation.
- 349A.45. Recovery from the estate—disposition of collection.
- 349A.46. Change of residence of person receiving old age assistance—removal to another county.
- 349A.46a. Payment of old age assistance—tax levies.
- 349A.46b. Payment by state old age pension commission to county commissions—when available to grantee—medium of payment.

Section

- 349A.46c. Certification of eligibles by county commission—transmission of money by state commission.
- 349A.46d. Warrants where county funds insufficient—reimbursement by state commission and payment—procedure.
- 349A.46e. Records and accounts.
- 349A.46f. Emergency act—purpose—construction.
- 349A.46g. Other acts suspended.
- 349A.46h. Expiry date of act.

PART IV

To Provide for Aid To Needy Dependent Children, In Conformity With Part IV of the Federal Social Security Act of 1935, Or As Amended.

Section

- 349A.47. Definition—dependent child.
- 349A.48. Administration—local administration—uniformity of plan—copies of act and blanks—rules—cooperation with federal government—reports to federal government—publication—county administration.
- 349A.49. Eligibility for assistance in aid to dependent children—family home—need of assistance—residence—payable by state or county—institutional care—need—alien parents.
- 349A.50. Application for assistance—contents—by whom made—one application for several children.
- 349A.51. Investigation of applications—visitation of home recommendations and information from official.
- 349A.52. Granting of assistance and amount of eligibility—determination by county board—decision—notice—payments—basis of decision—determination of amount.
- 349A.53. County share of participation—increase in federal aid—decrease in county disbursement.
- 349A.54. Periodic reconsideration and changes in amount of assistance.
- 349A.55. Removal to another county—obligations of county from which child moves.

PART V

To Provide for Aid To Needy Blind Individuals In Conformity With Title X of the Federal Social Security Act of 1935, or As Amended.

Section

- 349A.56. Definitions.
- 349A.57. Administration—local—uniform state plan—copies of act and blanks—rules—cooperation with federal government—reports—publication—county administration—visual acuity of applicant—measurement—examiners—fees—cooperation with other agencies.
- 349A.58. Eligibility for aid to the needy blind—vision of applicant—inadequate income—other assistance—residence in county—inmate of institution—property assignment—institutional care—need.
- 349A.59. Amount of assistance—limitations.
- 349A.60. Application for assistance—contents—inmate of institution.
- 349A.61. Investigation of applications—examination by ophthalmologist—rehabilitation report.

Section

- 349A.62. Granting of aid—county board's duty.
- 349A.63. Periodic reconsideration and changes in amount of assistance—re-examination of recipient.
- 349A.64. Expenses for treatment—services to aid vision.
- 349A.65. County share of participation.
- 349A.66. Change of residence of recipient receiving aid to blind—removal to another county—obligation of county removed from.
- 349A.67. Recovery from a recipient—addition to property—assistance—change or cancellation—more than required for recovery.
- 349A.68. Assistance may be paid to guardian—appointment.

PART VI

To Provide for Services for Crippled Children and Child Welfare Services, In Conformity with Title V, Parts 2 and 3, of the Federal Social Security Act of 1935, or As Amended, and Transferring the Powers and Duties of the State Bureau of Child Protection and the Orthopedic Commission to the Authority and Supervision of the State Department of Public Welfare, and Repealing Sections of Law in Conflict Herewith.

Section

- 349A.69. Effective date.
- 349A.70. Definition as used in this Part.
- 349A.71. Organization and administration of activities.
- 349A.72. Powers and duties of the state department—superseded agencies—personnel—rules and regulations—activities—services—cripples—law enforcement—rehabilitated children—foster placements—taking charge over objection—assisting other agencies.
- 349A.73. Duties of county board—local administration—services in county.

PART VII

Providing the Saving Clause, the Repeal of Conflicting Sections and the Effective Date.

Section

- 349A.74. Short title.
- 349A.75. Repeals.
- 349A.76. Repeals.
- 349A.77. Validity—partial invalidity saving clause.
- 349A.78. Effective date of act.

PART VIII

Appropriations, Disposition of Funds and Disbursements.

Section

- 349A.79. Receipt of funds—state treasurer as fiscal officer.
- 349A.80. Source of state appropriation.
- 349A.81. Method of Disbursement—imprest fund—claims against—bank accounts—how safeguarded—replacement of fund—appropriations.
- 349A.82. Transfer of funds from specific accounts.

PART I

To Establish A State Department of Public Welfare and County Departments of Public Welfare.

349A.1. Creation of department of public welfare. There is hereby created and established a state department of public welfare which shall consist of, a state board of public welfare, a state administrator of public welfare and such other officers and employees as may be hereinafter authorized. [L. '37, Ch. 82, Part I, § I. Approved and in effect March 4, 1937.

1938. "A casual comparison of chapter 82, (Laws of 1937, § 349A.1 et seq.) with section 4521 et seq. will demonstrate that at least some of the former are in conflict with the latter. We need not point out those conflicts; it is sufficient for the disposition of this case to point out that by chapter 82 the 'entire and exclusive superintendence of the poor' is no longer vested in the board of county commissioners as it was under section 4521." State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305.

1938. Section 4521 et seq., relating to the care of the poor, were not repealed by § 349A.1 et seq., and the former sections are still in force and effect and place the exclusive supervision of the poor in the hands of the county commissioners. State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305.

1938. The purpose of § 349A.1 to § 349A.83 was to cooperate with the federal government in caring for the needy and unfortunate, and the aim of the Montana legislature was to pass such a law that would meet with the conditions prescribed by congress before the plan could be approved and the grants could be obtained from the United States. State ex rel. Williams v. Kemp. 106 Mont. 444, 78 P. (2d) 585.

349A.2. Appointment of state board of public welfare—members and terms—qualifications—vacancies—oath—bond—chairman—officers—compensation—financial interest—expenses—fund payable from—books, property, and money—previous appropriations—obligations—orthopedic commission—bureau of child and animal protection. (a) The state board of public welfare shall consist of five (5) members appointed by the governor with the advice and consent of the senate on the basis of a broad experience and interest in civic affairs and matters of public welfare. The members of the state board shall be appointed for overlapping terms of three (3) years and without regard to political affiliation. The first two members named shall be appointed for terms of one (1) year and the next two members named shall be appointed for terms of two (2) years, and the fifth member for a term of three (3) years. At the expiration of the first year all new appointments shall be for terms of three (3) years. Board members may be removed by the governor for cause.

(b) Each member of the state board shall be a citizen of the United States and a resi-

dent of the state of Montana for a period of five (5) years immediately preceding the date of his appointment. Appointments to fill vacancies in the membership of the state board shall be made by the governor for the remaining portion of such term.

(c) The members of the state board shall take and subscribe to the constitutional oath of office and shall furnish a surety company bond conditioned upon the faithful and proper discharge of their duties in the amount of five thousand (\$5,000.00) dollars each, running to the state of Montana, the premium of which shall be paid by the state.

(d) The governor shall designate the chairman of the state board and the state board shall elect such remaining officers of the board as it may deem necessary.

(e) Members of the state board shall receive no compensation for their services other than the actual amount of traveling expenses actually incurred in respect to the performance of their official duties in attendance at regular or special meetings of the board and ten (\$10.00) dollars per diem for each day actually in attendance at such board meetings. The per diem of such individual member of the board shall be limited to not exceed the amount of five hundred (\$500.00) dollars per year. No member of the state board shall have any direct financial interest in or profit by any of the operations of the state department of public welfare of any of its agencies.

Per diem and expenses of state board members shall, upon claims being presented according to state law, be paid out of funds appropriated to the state department of public welfare.

(f) It shall be the duty of the existing Montana relief commission, Montana old age pension commission, Montana orthopedic commission, state bureau of child and animal protection and the state board of charities and reform to turn over and deliver to the state board of public welfare created by this act, all books, records, maps, papers, moneys, and all property of any kind and description now in the possession of such boards, bureaus and commissions, and all funds heretofore appropriated to the use of the Montana relief commission, Montana old age pension commission, Montana orthopedic commission, state bureau of child and animal protection and the state board of charities and reform, are hereby appropriated to the state board created and provided for in this act, it is further provided that the state board of public welfare shall assume all lawful outstanding contracts, agreements and obligations of said boards, bureaus and commissions. Provided, however, that the

provisions of this act shall not apply to the Montana orthopedic commission or the state bureau of child and animal protection until after the first day of July, 1937, and that these departments continue to operate as the law now provides until that date. [L. '37, Ch. 82, Part I, § II. Approved and in effect March 4, 1937, except as stated in proviso above (b).

1938. That the legislature did not intend that expenses and per diem of county commissioners, while sitting as members of the county welfare board, should be paid from funds of the state welfare department is to be inferred from the express provision in subdivision (e) of this section that the expenses and per diem of members of the state board should be paid from such funds, without mentioning the members of the county board. *State ex rel. Broadwater County v. Potter et al.*, 107 Mont. 284, 84 P. (2d) 796, holding, also, that the state board, in cooperating with the county board, is discharging an obligation primarily of the county, in relieving the poor.

349A.3. Powers and duties of the state board—state administrator—salary—qualifications—bond—service and personnel—merit system—examinations—duty of board—of administrator—policies—funds—records—audit—accounting. (a) In cooperation with the governor the state board shall select and appoint an administrative officer for the state department of public welfare who shall be known as the state administrator and who shall have such tenure of office, salary and administrative per diem and travel expense as the state board may establish, with the exception that the salary of said state administrator shall not exceed five thousand (\$5,000.00) dollars per year. The state administrator shall be selected and appointed with due regard to the education, training and ability necessary in public welfare administration and organization and shall have been a resident of the state of Montana at least five years prior to his appointment. The state administrator shall be bonded in the sum of twenty-five thousand (\$25,000.00) dollars, the premium of which will be paid by the state.

(b) Within six months after the adoption and approval of this act it shall be the duty of the state board to establish and maintain minimum standards of service and personnel and to formulate salary schedules for the classified personnel, based upon training, experience and ability, for employees selected for positions in the state office of the state department and in county departments.

A merit system when practical but not later than one (1) year from and after the effective date of this act shall be established and maintained pertaining to qualifications for appointments, tenure of office, annual merit ratings, releases, promotions and salary schedules and

the state board shall cause examinations to be held from time to time throughout the state for the purpose of establishing an available qualified list in order of merit of persons eligible for appointment. Personnel standards shall conform in so far as possible with general standards as established or required by the federal social security board.

(c) The state board is charged with the authority and duty to exercise general supervision and control over all activities and agencies as provided for in each part of this act.

The state board shall be limited in function to that of general policy and rules and regulations and all administrative and executive authority, functions and duties shall be vested in the state administrator, subject to the authority of the state board.

The state board shall be responsible for the adoption of such general policies, rules and regulations as are necessary for the government of the state department, county departments or any of its agencies, including specific regulations to prohibit political activities by employees of the state and county departments of public welfare. All such policies, rules and regulations shall conform to the federal social security act, the rules and regulations issued by the federal social security board and also shall conform to the state welfare act, and all policies, rules and regulations so adopted by the state board shall be binding upon the several county departments and county boards of public welfare. The state department shall establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the state department and the county departments. The use of such records, papers, files and communications by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished.

(d) The state department of public welfare is hereby authorized and it shall be its duty to administer and supervise all federal funds allocated to the state and all state funds appropriated to the state department of public welfare, for the activities and purposes set forth under each part of this act. The state department of public welfare is also hereby authorized and it shall be its duty to do all things necessary, in conformity with federal and state laws, for the proper fulfillment of the purposes set forth in this act.

(e) The state department of public welfare shall maintain such records and render such reports as may be required by the federal board and such additional records and reports

as shall be found necessary for state purposes or required by the state examiner. County departments shall likewise be required to maintain such records and render such reports as the state board may require.

All receipts of monies, goods or property and all disbursements therefrom shall be subject to examination and audit by the state examiner.

The fiscal rules and regulations of the United States government, as enjoined upon the states in respect to the federal social security act, shall be used by the state and county departments as a method of accounting for all joint federal state funds. [L. '39, Ch. 129, § 1. Approved and in effect March 9, 1939. Amending L. '37, Ch. 82, Part I, § III. Approved and in effect March 4, 1937.

Note. Subdivision (c) of the above section was amended by L. '39, Ch. 129, § 1, approved and in effect March 9, 1939, without re-enacting the entire section. Quære whether this was not in violation of Const. Art. V, § 25. In this connection reference is made to State ex rel. Hay v. Hindson, 40 Mont. 353, 356, 106 P. 362, 363, where it is stated that "our constitution (Art. 5, § 25) requires that the entire section * * *, as thus amended, should be re-enacted and published at length, * * *." See, also, other cases cited under this constitutional section in R. C. M. 1935.

1938. In the absence of a contract or agreement between the board and a federal agency as to how the funds should be spent by the agency, the board has no authority to deliver a check to such agency, as that would amount to a donation, and a taxpayer could enjoin such delivery. State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677.

349A.4. Legal services—attorney general—additional counsel—compensation. The attorney general of the state shall act as legal adviser to the state department of public welfare and shall perform such legal services as may be required and he is hereby empowered to employ such other and additional counsel as may be necessary for this purpose, and may fix the compensation therefor, provided, however, that the total sum per annum for the service shall not exceed twenty-four hundred (\$2400.00) dollars, which compensation shall be paid out of state public welfare funds. [L. '37, Ch. 82, Part I, § IV. Approved and in effect March 4, 1937.

Note. See note under section 349A.3, as to the constitutionality of a law amending part of a section without reprinting the entire section at large.

349A.5. Divisions of administration. The administrator, with the approval of the state board, may establish divisions in the state department for the administration of this act, and may allocate and re-allocate functions between divisions as may be necessary or desirable for competent administration. [L. '37,

Ch. 82, Part I, § V. Approved and in effect March 4, 1937.

349A.6. Administrator—functions—biennial budget estimates—biennial reports—personnel—appointment—merit system. (a) The administrator shall be the executive and administrative officer of the state department of public welfare and shall act as secretary of the state board. Before each regular biennial meeting of the legislative assembly he shall prepare and submit to the state board of public welfare for its consideration budget estimates of all funds required to be appropriated by the legislative assembly for the operation of the department during the two next ensuing fiscal years as fiscal years are defined by section 518, revised codes of 1935. These budget estimates shall contain all information necessary for their consideration. After these budget estimates have been considered by the state board of public welfare, but not later than November 1, the administrator shall submit these budget estimates to the state board of examiners with requests for appropriations.

After the close of the fiscal year in each even numbered calendar year, the state administrator shall prepare a report to the governor of the state for the two preceding fiscal years, showing the operations of the department, furnishing information about all its principal activities giving the source and amounts of all funds received and the purposes for which they have been expended. It shall contain such statistical information and supplementary data as the administrator may deem pertinent or the governor may request. The report shall also contain such recommendations for legislation as experience may indicate to be desirable. The report for the period terminating June 30, 1940, shall also include the period between March 1, 1938, and June 30, 1938. The report shall be printed and submitted to the governor not later than October 15. The administrator shall prepare such interim reports as he may deem proper or the governor may require.

(b) In conformity with the merit system governing the selection and entire status of officers and employees in the state department of public welfare and in all county departments of public welfare in the state of Montana, adopted by the state board of public welfare and approved by the social security board, the state administrator shall appoint such other state department and supervisory field personnel as may be necessary for the efficient performances of the activities of the state department. The administrator shall also supervise the appointment, dismissal and entire status of the public assistance staff

attached to the county boards of public welfare in accordance with the merit system. All state department and county department personnel shall be legal residents of the state of Montana. [L. '39, Ch. 129, § 2. Approved and in effect March 9, 1939. Amending L. '37, Ch. 82, Part I, § VI. Approved and in effect March 4, 1937.]

349A.7. Authority and activities of the state department—public assistance—child welfare—private institutions—services to blind—county welfare—personnel standards—cooperation—agent of federal government—Indian assistance—ward Indian defined. The state department is hereby charged with authority over and administration or supervision of all the purposes and operations as set forth under the several parts of this act. The state department shall:

(a) Administer or supervise all forms of public assistance including general relief, old age assistance, aid to dependent children, aid to needy blind, child protection and child welfare and the supervision of agencies and institutions caring for dependent, delinquent or mentally or physically handicapped children and adults.

(b) Administer or supervise all child welfare activities, including importation and exportation of children; licensing and supervising of private and local child-caring agencies; the care of dependent, neglected and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth.

(c) Supervise private institutions providing care for the needy, indigent, handicapped or dependent adults.

(d) Develop and cooperate with other state agencies provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions and vocational guidance and training of the blind.

(e) Provide services to county governments in respect to organization and supervision of county welfare departments for efficiency and economy in the administration of public welfare functions.

(f) Prescribe and maintain minimum standards and salary rates for public welfare personnel in state and county departments, establish rules and regulations to maintain such standards, and furnish to the county welfare boards a list of qualified personnel who are available for appointment. Insofar as possible such personnel shall be residents of the county.

(g) Assist and cooperate with other state and federal departments, bureaus, agencies and

institutions, when so requested, by performing services in conformity with the purposes of this act.

(h) Act as the agent of the federal government in public welfare matters of mutual concern in conformity with this act and the federal social security act, and in the administration of any federal funds granted to the state to aid in the purposes and functions of the state department.

The counties shall not be required to reimburse the state department any portion of old age assistance, aid to needy dependent children or aid to needy blind paid to ward Indians. A ward Indian is hereby defined as an Indian who is living on an Indian reservation set aside for tribal use, or is a member of a tribe or nation accorded certain rights and privileges by treaty or by federal statutes. If and when the federal social security act is amended to define a "ward Indian," such definition shall supersede the foregoing definition. [L. '39, Ch. 129, § 3. Approved and in effect March 9, 1939. Amending L. '37, Ch. 82, Part I, § VII, approved and in effect March 4, 1937.]

Note. See note under section 349A.3, as to constitutionality of law amending part of a section.

Note. See note under section 349A.3, as to the constitutionality of a law amending part of a section without reprinting the entire section at large.

1938. Since the enactment of this chapter the entire and exclusive superintendence of the poor is no longer vested in the county commissioners as it formerly was under section 4521. "The burden of caring for the poor and needy has assumed such proportion that the state and federal governments now cooperate with the counties in these matters." State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305. To same effect see State ex rel. Broadwater County v. Potter et al., 107 Mont. 284, 84 P. (2d) 796.

1938. In the absence of a contract or agreement between the board and a federal agency as to how the funds should be spent by the agency, the board has no authority to deliver a check to such agency, as that would amount to a donation, and a tax payer may enjoin such delivery. State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677.

1938. The public welfare board may contract with a governmental agency, such as the works progress administration, to furnish certain materials necessary to insure the institution and completion of projects reasonably designed to furnish relief to the unemployed in the form of work. State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677.

1938. The public welfare board is bound to supervise the expenditure of the funds appropriated by the state for its use, and when the board delivers funds to a federal agency to be expended by it, at its discretion, for materials to be thereafter purchased, and for use on projects to be thereafter selected, it is not administering or supervising the expenditure of these funds. State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677.

Subdivision (h).

1938. Consideration of ward Indians only gave rise to subdivision (h) of section 349A.7. As to emancipated Indians, they are entitled to all the rights and privileges of white residents. As to emancipated Indians, the counties must bear their proportion of relief of all kinds under sections 349A.1 to 349A.83. Ward Indians are entitled to all the relief provided for, under these sections, to which the federal government contributes by virtue of the federal social security act, or otherwise, but that relief must be provided by the state, and the state fund shall not be reimbursed by the county. State ex rel. Williams v. Kemp, 106 Mont. 444, 78 P. (2d) 585.

1938. The clause in subdivision (h), section 349A.7, reading "to which the federal government contributes" does not confine the relief to those forms of assistance contributed to by the federal government under the federal social security act. State ex rel. Williams v. Kemp, 106 Mont. 444, 78 P. (2d) 585.

1938. The last sentence in subdivision (h) of section 349A.7 was enacted in view of the possibility that congress would enact the social security act relieving the states from caring for ward Indians, and on this account began the sentence with "if." State ex rel. Williams v. Kemp, 106 Mont. 444, 78 P. (2d) 585.

1938. The state can disburse for general relief, medical aid, and hospitalization to needy ward Indians from the appropriation made by § 349A.82(d)(6). State ex rel. Williams v. Kemp, 106 Mont. 444, 78 P. (2d) 585.

1938. Since the state must provide to needy ward Indians without contribution from the county, and the act makes no different arrangement for passing upon applicants for relief to ward Indians than to others, the county board has authority to pass upon such applicants, and the state's rights are fully protected by having the right to review, on its own motion, any decision of the county board. State ex rel. Williams v. Kemp, 106 Mont. 444, 78 P. (2d) 585.

1938. Section 349A.27, being a general provision, and § 349A.7(h) a special provision, dealing with ward Indians only, when applied to ward Indians the latter is controlling over other general provisions of the act, and therefore controls over the former. In consequence, medical aid and services and hospitalization for ward Indians, not being adequately provided for by the federal government, must be provided by the state without reimbursement by the county. This conclusion necessitates construing the last "or" in subdivision (h) to mean "and," which is allowable when necessary to carry out the obvious intention of the legislature. State ex rel. Williams v. Kemp, 106 Mont. 444, 78 P. (2d) 585.

349A.8. State grants-in-aid—state department—authority—contributions of counties—enforcement of act and standards. In administering or supervising any state or federal funds appropriated or made available to the state department for public welfare purposes, the state department shall have the authority to:

(a) Require as a condition for receiving grants-in-aid that the county shall bear the proportion of the total of local public

assistance as is fixed by law relating to such assistance.

(b) Make use of all legal processes to enforce the minimum standards prescribed by the state department under laws providing for grants-in-aid, provided that such standards shall not exceed in cost the amount derived from levies established by state law.

(c) Require that each part of this act shall be in effect in all counties of the state. [L. '37, Ch. 82, Part I, § VIII. Approved and in effect March 4, 1937.]

1938. The state board of public welfare is only required to make grants to the county when it is demonstrated to the board that the county through the exercise of its statutory powers can no longer raise the necessary funds to provide general relief. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. "Before the county can secure aid from the state it must issue warrants in anticipation of the revenues derived from the six mill levy (required by law to be levied for the poor fund) in accordance with the budget and such additional emergency warrants as can be issued which may be freely converted into cash by the recipient without discount. The expenditure from the poor fund in payment of interest on registered warrants drawn against the fund is a lawful expenditure from the fund." State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

349A.9. County departments—establishment—combining counties—county welfare board—personnel—compensation—expenses. (a) There shall be established in each county of the state a county department of public welfare which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public welfare activities of the county. Provided, however, if conditions warrant and if two or more county boards enter into an agreement, two or more counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit.

(b) The board of county commissioners, ex-officio, shall be the county welfare board and is hereby authorized to devote such additional time for public welfare matters as may be found necessary. The members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact business as a board of county commissioners and as a county welfare board on the same day, and in such cases they shall be paid as a board of

county commissioners, but shall in no case receive compensation for more than one day's work for all services performed on the same calendar day.

(c) The county attorney shall be, ex-officio, the legal advisor to the county welfare board and shall render such legal services as the county department may require. The county clerk and recorder shall be, ex-officio, the secretary and clerk of the county welfare board. [L. '39, Ch. 129, § 4. Approved and in effect March 9, 1939. Amending L. '37, Ch. 82, Part I, § IV. Approved and in effect March 4, 1937.]

Note. See note under section 349A.3, as to the constitutionality of a law amending part of a section without reprinting the entire section at large.

Subdivision (b).

1938. Under this subdivision the compensation of the county commissioners, when sitting as the county welfare board, is payable by the county and not the state. State ex rel. Broadwater County v. Potter et al., 107 Mont. 284, 84 P. (2d) 796.

349A.10. Powers and duties of the county board—personnel—assistant workers—supervision—reimbursement of county—field supervisors and auditors—recommendations—reports—salaries and expenses—source of payment—grants by county welfare board. (a) The county board of public welfare shall be responsible for establishing local policies and such rules and regulations as are necessary to govern the county department and local administration of public welfare activities except that all such policies and rules and regulations must be in conformity with general policies and rules and regulations established by the state board.

(b) Each county board shall select and appoint from a list of qualified persons furnished by the state department such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the state department, may appoint some fully qualified person listed by the state department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the state department shall have the authority to supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare shall not dismiss any member of the staff personnel without the approval of the state department; but the state department shall have the authority to request the county board to dismiss any member of the staff per-

sonnel for inefficiency, incompetence or similar cause.

Public assistance staff personnel attached to the county board shall be paid from state public welfare funds, both their salaries and their actual and necessary traveling expenses, and their necessary subsistence expenses when away from the county seat in the performance of their duties; but the county board of public welfare shall reimburse the state department of public welfare, from county poor funds, one-half of the payments so made to its public assistance staff personnel. All other administrative costs of the county department shall also be paid from county poor funds.

On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the state department of public welfare shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within twenty (20) days after the presentation of the claim and the state department shall credit (add) all such reimbursements to its account for administrative costs.

(c) County departments shall be under the supervision of such field supervisors and subject to audit by such field auditors as may be appointed for this purpose by the state department. Such field supervisors shall be direct representatives of the state department in maintaining personal contact, supervision and advisory services between the state department and the county department, and such field auditors shall likewise be direct representatives of the state department in maintaining personal contact between the state department and the county department.

(d) The county welfare board shall make all grants and changes in grants, based on the needs of each applicant as recommended after investigation by the staff worker, in accordance with the standards of assistance and the rules and regulations prescribed by the state department.

(e) The county board shall be required to submit to the state department such monthly, quarterly or yearly reports as the state board may require in respect to county public assistance activities, county welfare or poor funds, and such state funds as are granted to the county for assistance purposes. [L. '39, Ch. 129, §§ 5, 6, 7. Approved and in effect March 9, 1939. Amending L. '37, Ch. 82, Part I, § X. Approved and in effect March 4, 1937.]

Note. See note under section 349A.3, as to the constitutionality of a law amending part of a section without reprinting the entire section at large.

Note. See note under section 349A.3, as to constitutionality of law amending part of a section.

1938. The policies that may be by the board, and the rules and regulations which may be adopted, must conform to, and not be inconsistent with, positive provisions of the statute. The power to establish policies and to promulgate rules and regulations does not empower the board to change the form of relief which the legislature has prescribed. State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305.

1938. There is nothing in subdivision (b) of this section requiring the state board of public welfare to pay expenses and per diem to the county commissioners sitting as the county welfare board, as the latter part of this subdivision has reference to the staff personnel only. State ex rel. Broadwater County v. Potter et al., 107 Mont. 284, 84 P. (2d) 796.

349A.11. Functions and activities of county department — local administration — county commissioners — tax levies — contributions by state — budget — mailing to administrator — county poor fund — restriction as to use. (a) The county department of public assistance shall be charged with the local administration of all forms of public assistance and welfare operations in the county including general relief, old age assistance, aid to dependent children, aid to needy blind and child protection and welfare, except that all such local administration must conform to federal and state law and the rules and regulations as established by the state board.

(b) It is hereby made the duty of the board of county commissioners in each county to levy the per capita tax of two dollars (\$2.00), and the six (6) mills for the county poor fund as provided by law, or so much thereof as may be necessary, and to budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to pay the general relief activities of the county and to meet its proportionate share of old age assistance, aid to needy dependent children, aid to needy blind and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county. The county budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for all of such activities. The number of mills to be levied for the county poor fund shall be fixed and determined in the manner provided by law.

As soon as the preliminary budget provided for in section 4613.3 of the revised codes of 1935 has been agreed upon, a copy of so much thereof as applies to the county poor fund shall without delay be mailed to the state administrator of public welfare and he shall have the right, at any time before the final adoption of the budget, to make such

recommendations with regard to changes in any part of the budget relating to the county poor fund as is deemed necessary in order to enable the county to discharge all its obligations under the public welfare act.

No part of this fund shall be used directly or indirectly for the erection or improvement of any county building, so long as the fund is needed for general relief expenditures by the county, or is needed for paying the county's proportionate share of old age assistance, aid to needy dependent children, aid to needy blind, or its proportionate share of any other welfare activity that may be carried on jointly by the state and the county. [L. '39, Ch. 129, § 8, approved and in effect March 9, 1939, amending L. '37, Ch. 82, Part I, § XI, approved and in effect March 4, 1937.]

Note. See note under section 349A.3, as to the constitutionality of a law amending part of a section without reprinting the entire section at large.

1938. Subdivision (b) of this section requires, as a condition precedent to the county board's right to call on the state welfare fund, that it must budget and expend so much of the funds in the county poor fund as will meet its proportionate share of assistance. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. "Before the county can secure aid from the state it must issue warrants in anticipation of the revenues derived from the six mill levy (required by law to be levied for the poor fund) in accordance with the budget and such additional emergency warrants as can be issued which may be freely converted into cash by the recipient without any discount. The expenditure from the poor fund in payment of interest on registered warrants drawn against the fund is a lawful expenditure from the fund." State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. Subdivision (b) of this section relates to all form of public assistance under all parts of this act, and contains certain conditions precedent to the granting of aid by the state department to the county. Under it the six mill levy for the poor fund must prove inadequate to meet the county's proportionate share of public assistance under any part of the act, which can only be inadequate after it has been expended. Clearly this subdivision contemplates the issuance of warrants to the amount of the tax levy. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. Where the county has improperly made excessive appropriations from the poor fund for general relief, to compel the state board of public welfare to make grants to the county to pay the whole cost and expense of general relief, the state board can compel such excesses to be transferred back to the poor fund for general relief before the county is entitled to a grant in aid. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. The state board of public welfare is only required to make grants to the county when it is demonstrated to the board that the county through the exercise of its statutory powers can no longer raise the necessary funds to provide general relief.

State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. The policies that may be by the board, and the rules and regulations which may be adopted, must conform to, and not be inconsistent with, positive provisions of the statute. The power to establish policies and to promulgate rules and regulations does not empower the board to change the form of relief which the legislature has prescribed. State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305.

Subdivision (b).

1938. Objection that if counties may be compelled by the legislature to pay relief claimants by warrant or check, then this amounts to a levy of taxes by the legislature for a county purpose, contrary to Const. Art. 12, § 4, held untenable where there is no direct tax attempted to be levied by the legislature. State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305.

1938. "The fair import of this subdivision is that it prescribes the six-mill tax levy as the minimum requirement in order to place the county in a situation to obtain financial aid from the state, if needed. The levy is not the result of coercion or duress on the part of the legislature, but rests upon the choice of the county." State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305.

1938. Cited in State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305, holding that the fact that poor fund was exhausted was no reason for not drawing warrants or checks for the payment of relief.

349A.12. Right of appeal — applicant's appeal to state department — original jurisdiction—notice and hearing—finality of decisions of department. If an application for assistance under this act is not acted upon by the county department within a reasonable time after the filing of the application, or is denied in whole or in part, or if any award of assistance is modified or cancelled under any provision of this act, the applicant or recipient may appeal to the state department in the manner and form prescribed by the state department. The state department shall, upon receipt of such an appeal, give the applicant or recipient reasonable notice and opportunity for a fair hearing.

The state department may also, upon its own motion, review any decision of a county department, and may consider any application upon which a decision has not been made by the county department within a reasonable time. The state department may make such additional investigation as it may deem necessary, and shall make such decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this act.

In the case of the state department reviewing a county decision on its own motion, applicants or recipients affected by such

decisions of the state department shall, upon request, be given reasonable notice and opportunity for a fair hearing by the state department.

All decisions of the state department shall be final and shall be binding upon the county involved and shall be complied with by the county department. [L. '37, Ch. 82, Part I, § XII. Approved and in effect March 4, 1937.

1938. Since the state must provide to needy ward Indians without contribution from the county, and the act makes no different arrangement for passing upon applicants for relief to ward Indians than to others, the county board has authority to pass upon such applicants, and the state's rights are fully protected by having the right to review, on its own motion, any decision of the county board. State ex rel. Williams v. Kemp, 106 Mont. 444, 78 P. (2d) 585.

1938. Mandamus against the county board is the proper remedy of a relief applicant to compel payment of relief where the board found the facts in his favor, and an appeal to the state board was not necessary. State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305.

1938. The state board of public welfare is only required to make grants to the county when it is demonstrated to the board that the county through the exercise of its statutory powers can no longer raise the necessary funds to provide general relief. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. Where there is an issue between the county and state department as to the number of applicants for relief entitled thereto, and the amount to which they are entitled, the supreme court cannot by mandamus compel the state department to make a grant in aid in any definite sum in advance of action taken by the state department with relation thereto. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. Where the county has improperly made excessive appropriations from the poor fund for general relief, to compel the state board of public welfare to make grants to the county to pay the whole cost and expense of general relief, the state board can compel such excesses to be transferred back to the poor fund for general relief before the county is entitled to a grant in aid. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. "Before the county can secure aid from the state it must issue warrants in anticipation of the revenues derived from the six mill levy (required by law to be levied for the poor fund) in accordance with the budget and such additional emergency warrants as can be issued which may be freely converted into cash by the recipient without discount. The expenditure from the poor fund in payment of interest on registered warrants drawn against the fund is a lawful expenditure from the fund." State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

349A.13. Right to hold property—powers of board—condemnation. The state board shall have power to acquire by purchase, exchange, or gift, on such terms and conditions and in such manner as it may deem proper, and to

acquire by condemnation in accordance with and subject to the provisions of any and all existing laws applicable to the condemnation of property for public use, and land, rights, easements, and other property, either real or personal, necessary or proper to carry out the purposes set forth in this act. Title to property purchased, or condemned, or acquired in whatever manner, shall be taken in the name of the state of Montana for the use and benefit of the state department. [L. '37, Ch. 82, Part I, § XIII. Approved and in effect March 4, 1937.

349A.14. Power to make contracts — with United States — intent of act — restrictions as to use of state funds. The state board is empowered to enter into contracts and leases with the United States of America, its instrumentalities, or its agencies, or any thereof, to carry out any of the purposes set forth in this act and may in such contracts or leases authorize the United States, its instrumentalities or agencies, or any thereof, to exercise such supervision over any property belonging to the state board, or any matter or thing the subject of said contract or lease, as it may be required by the United States, its instrumentalities, or its agencies, or any thereof, until such time as any money expended, advanced or loaned by the said United States, its instrumentalities, or agencies, and agreed to be repaid thereto by the state board shall have been fully repaid. It is the purpose and intent of this act that the state board shall be authorized and empowered to accept co-operation from the United States of America, its instrumentalities and agencies in all matters deemed necessary by the state board to carry out the purposes of this act, and the state board shall have full power to do all things necessary in order to avail itself of such aid, assistance and cooperation under federal legislation heretofore or hereafter enacted by congress or under any proclamation or order of the executive, or of any executive department or agency, of the United States, now or hereafter promulgated or made.

The state board of public welfare shall not use any state funds, directly or indirectly, for sponsoring projects, (except projects for the improvement of property owned or leased by the state department of public welfare), for such undertakings as the grading or improvement of streets, alleys and highways; the building of bridges; the erection, alteration, or repair of public buildings; the improvement of parks or boulevards; irrigation and water conservation projects or similar undertakings. The state board of public welfare shall have no authority whatever to contribute, directly or indirectly, any state funds in any form or

manner to projects of this nature except to projects for the improvement of property owned or leased by the state department of public welfare. [L. '39, Ch. 129, § 9, approved and in effect March 9, 1939, amending L. '37, Ch. 82, Part I, § XIV, approved and in effect March 4, 1937.

1938. The public welfare board may contract with a governmental agency, such as the works progress administration, to furnish certain materials necessary to insure the institution and completion of projects reasonably designed to furnish relief to the unemployed in the form of work. State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677.

1938. The public welfare board is bound to supervise the expenditure of the funds appropriated by the state for its use, and when the board delivers funds to a federal agency to be expended by it, at the agency's discretion, for materials to be thereafter purchased, and for use on projects to be thereafter selected, it is not administering or supervising the expenditure of these funds. State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677.

1938. In the absence of a contract or agreement between the board and a federal agency as to how the funds should be spent by the agency, the board has no authority to deliver a check to such agency, as that would amount to a donation, and a tax payer may enjoin such delivery. State ex rel. Browning v. Brandjord, State Adm'r of Public Welfare, 106 Mont. 395, 81 P. (2d) 677.

349A.15. Fraudulent acts—obtaining public assistance. Whoever knowingly obtains, or attempts to obtain, or aids, or abets any person to obtain by means of wilfully false statement or representation or by impersonation, or other fraudulent device, public assistance to which he is not entitled, assistance greater than that to which he is justly entitled; or whoever aids or abets in buying or in any way disposing of the property, either personal or real, of a recipient of assistance without the consent of the county department and with the intent to defeat the purposes of this act, shall be guilty of a misdemeanor. In assessing the penalty the court shall take into consideration, among other factors, the amount of money fraudulently received. [L. '37, Ch. 82, Part I, § XV. Approved and in effect March 4, 1937.

349A.16. Approval or denial of signatures—on application. Approved or denied applications for assistance under this act shall be signed by the chairman and one other member of the county board. In the event that the state board may require all such actions to be reviewed and receive the final approval or disapproval of the state department, the state board shall designate certain executive officers of the state department who shall sign such state department approvals or disapprovals. [L. '37, Ch. 82, Part I, § XVI. Approved and in effect March 4, 1937.

349A.17. Revocation of assistance. If at any time the county or state departments have reason to believe, by reason of a complaint or otherwise, that public assistance under this act has been improperly granted, it shall cause an investigation to be made. If it appears as a result of any such investigation that the assistance was improperly granted, the state department shall notify the county department that no further payments shall be authorized for such recipient. The right of appeal is granted recipients whose assistance has been revoked. [L. '37, Ch. 82, Part I, § XVII. Approved and in effect March 4, 1937.

349A.18. Assistance not assignable — not subject to execution. Assistance granted under this act shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this act shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law. [L. '37, Ch. 82, Part I, § XVIII. Approved and in effect March 4, 1937.

349A.19. Method of issuing assistance grants — checks — state department — reimbursement by county. (a) Checks in payment of public assistance, as provided for in each part of this act, with the exception of general relief, shall be issued by the state department upon approved lists of such eligible grantees as are forwarded by the county department to the state department and all such checks will be mailed to the individual recipient. The checks in payment of public assistance shall be issued in the full approved amount for each eligible approved grantee and the original monthly payment shall be from the state public welfare accounts. All public assistance checks shall represent cash on demand at full par value to the recipient.

(b) On or before the twentieth of each month the state department will present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county during the month. The county department must make such reimbursement to the state department within twenty days after such claim is presented. [L. '37, Ch. 82, Part I, § XIX. Approved and in effect March 4, 1937.

349A.20. Reports and records — county department's duty — state department's duty. Each county department shall keep such records and make such reports and in such detail as the state department may from time to time require, and shall transmit to the state department upon its request copies of applications and any or all other records per-

taining to any case. The state department is hereby authorized and directed to keep such records, in such form and containing such information, as the federal social security board may from time to time require, and comply with such provisions as the federal board may from time to time find necessary to assure the correctness and verification of such reports. [L. '39, Ch. 129, § 10, approved and in effect March 9, 1939, amending L. '37, Ch. 82, Part I, § XX, approved and in effect March 4, 1937.

349A.21. Limitations of act — amendments and repeals — effect. All assistance granted under this act shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by such amending or repealing act. [L. '37, Ch. 82, Part I, § XXI. Approved and in effect March 4, 1937.

PART II

General Relief: To Provide Aid To the Unemployable Destitute and Those Made Destitute Through Lack of Employment and All Those In Need of Public Assistance Not Eligible or Otherwise Cared for Under Other Parts of This Act.

349A.22. Administration — general relief. The state department and county departments of public welfare are hereby authorized and charged with the administration and supervision of general relief under the powers, duties and functions as prescribed in Part I of this act [349A1-349A21]. [L. '37, Ch. 82, Part II, § I. Approved and in effect March 4, 1937.

349A.23. Eligibility requirements for general relief—residence—need—aliens—interstate transients—institutional care — supplementary cash assistance. (a) An applicant to be eligible for general relief, hereafter entering the state, must have resided in the state of Montana for a period of one year, six months or more of which must be in the county where he makes application for relief. When a person has gained residence in a county making him eligible for general relief, he shall retain this residence until residence has been gained in some other county in the state; and such new residence shall only be gained by living continuously in such county for six months or longer. If a person is absent from the state voluntarily and continuously for a period of one year or more, he shall thereby be ineligible for general relief in the state of Montana.

(b) An applicant for assistance including medical care and hospitalization shall be eligible to receive assistance only after investigation by the county department reveals that the income and resources are insufficient to provide the necessities of life, and assistance shall be provided to meet a minimum subsistence compatible with decency and health.

(c) Aliens found to be illegally within the United States shall not be eligible for relief from state funds.

(d) Inter-state transients, without legal Montana residence, shall not be eligible for continued assistance from state funds but may, if in distress, receive temporary relief from either state or county funds until such time as such transients may be returned to their state of legal residence or state or [of] origin. If transient families are stranded and without means of return, their transportation may be paid from state funds.

(e) An applicant must not be in need of continued care in a public institution because of physical or mental condition.

(f) Individuals receiving assistance under other parts of this act shall not receive supplementary cash assistance from state relief funds. [L. '39, Ch. 129, §§ 11, 12, approved and in effect March 9, 1939, amending L. '37, Ch. 82, Part II, § II, approved and in effect March 4, 1937.]

Note. See note under section 349A.3, as to the constitutionality of a law amending part of a section without reprinting the entire section at large.

1938. Since the state must provide to needy ward Indians without contribution from the county, and the act makes no different arrangement for passing upon applicants for relief to ward Indians than to others, the county board has authority to pass upon such applicants, and the state's rights are fully protected by having the right to review, on its own motion, any decision of the county board. *State ex rel. Williams v. Kemp*, 106 Mont. 444, 78 P. (2d) 585.

1938. Cited in *State ex rel. Williams v. Kemp*, 106 Mont. 444, 78 P. (2d) 585.

1938. Consideration of ward Indians only gave rise to subdivision (h) of section 349A.7. As to emancipated Indians, they are entitled to all the rights and privileges of white residents. As to emancipated Indians, the counties must bear their proportion of relief of all kinds under sections 349A.7 to 349A.83. Ward Indians are entitled to all the relief provided for, under these sections, to which the federal government contributes by virtue of the federal social security act, or otherwise, but that relief must be provided by the state, and the state fund shall not be reimbursed by the county. *State ex rel. Williams v. Kemp*, 106 Mont. 444, 78 P. (2d) 585.

1938. The clause in subdivision (h), section 349A.7, reading "to which the federal government contributes" does not confine the relief to those forms of assistance contributed to by the federal government under the federal social security act. *State*

ex rel. Williams v. Kemp, 106 Mont. 444, 78 P. (2d) 585.

349A.24. Equal consideration required. Persons eligible for and in need of relief shall be, whether employable or unemployable, given equal consideration for public assistance as those persons eligible for assistance under other parts of this act. [L. '37, Ch. 82, Part II, § III. Approved and in effect March 4, 1937.]

349A.25. Right of appeal and hearing — complaints or grievances. All persons seeking public assistance from relief funds are hereby guaranteed the right of appeal to either the county public welfare board or the state public welfare department, or both. Individuals or committees with complaints or grievances shall be given a fair and impartial hearing by either the county board or the state department and it shall be required that due consideration shall be given all proven facts presented by such individuals or committees and the county board or the state department shall be required to relief [relieve] such situations, if not otherwise prohibited by law and to the extent of funds available. [L. '37, Ch. 82, Part II, § IV. Approved and in effect March 4, 1937.]

1938. Mandamus against the county board is the proper remedy of a relief applicant to compel the payment of relief where the board found the facts in his favor, and an appeal to the state board was not necessary. *State ex rel. Wilson v. Weir*, 106 Mont. 526, 79 P. (2d) 305.

349A.26. Cash relief — disbursing orders — when work required. All relief disbursements by county departments of public welfare shall be by warrant or check; provided, however, that if the county welfare department finds that a recipient is in the habit of dissipating relief allowances instead of using them for the purposes intended, or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments; but all such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county. It is further provided, however, that if the county has work available which an applicant for general relief is capable of performing, then the county department of public welfare may require the applicant to perform such work at the prevailing rate of wages to be paid from the county poor fund in place of granting him general relief. [L. '39, Ch. 129, § 13, approved and in effect March 9, 1939, amending L. '37, Ch. 82, Part II, § V, approved and in effect March 4, 1937.]

1938. That the poor fund, against which warrants or checks would be drawn, is exhausted does not

furnish a reason why they should not be drawn, unless they would entail tax levies prohibited by the constitution. State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305.

1938. Where the county has improperly made excessive appropriations from the poor fund for general relief, to compel the state board of public welfare to make grants to the county to pay the whole cost and expense of general relief, the state board can compel such excesses to be transferred back to the poor fund for general relief before the county is entitled to a grant in aid. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. Since "represent" means to stand in place of, to be the equivalent of, the warrants mentioned in this section must be the equivalent of cash; i.e., readily convertible into cash. "They are only the equivalent of cash when they may be converted into an equal amount of cash as called for in the warrant, and whenever warrants issued either in anticipation of the tax levies or emergency warrants, which are not the equivalent of cash, then the requirements of the section are not met. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

349A.27. Medical aid and hospitalization—county commissioners to provide—osteopathic and chiropractic treatment—"medical" defined. Medical aid and services and hospitalization for persons unable to provide such necessities for themselves are hereby declared to be the legal and financial duty and responsibility of the board of county commissioners, payable from the county poor fund. It shall be the duty of the board of county commissioners to make provision for competent and skilled medical or surgical services as approved by the state board of health or the state medical association, or in the case of osteopathic practitioners by the state osteopathic association or chiropractors by the state chiropractic association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners. [L. '39, Ch. 129, § 15, approved and in effect March 9, 1939, amending L. '37, Ch. 82, Part II, § VI, approved and in effect March 4, 1937.

1938. Section 349A.27, being a general provision, and § 349A.7(h) a special provision, dealing with ward Indians only, when applied to ward Indians the latter is controlling over other general provisions of the act, and therefore controls over the former. In consequence, medical aid and services and hospitalization for ward Indians, not being adequately provided for by the federal government, must be provided by the state without reimbursement by the county. This conclusion necessitates construing the last "or" in subdivision (h) to mean "and," which is allowable when necessary to carry out the obvious intention of the legislature. State ex rel. Williams v. Kemp, 106 Mont. 444, 78 P. (2d) 585.

349A.28. Primary obligations of the board of county commissioners—tax levies and budgets—institutional care. It is hereby declared to be the primary legal duty and financial obligation of the board of county commissioners to

make such tax levies and to establish such budgets in the county poor fund as provided by law and as are necessary to provide adequate institutional care for all such indigent residents as are in need of institutional care and to make such tax levies and establish such budgets in the county poor fund as are necessary to make provision for medical aid and services and hospitalization for all indigent county residents. All such public assistance and services shall be charges [charged] against and payable from the county poor fund. [L. '37, Ch. 82, Part II, § VII. Approved and in effect March 4, 1937.

1938. "Before the county can secure aid from the state it must issue warrants in anticipation of the revenues derived from the six mill levy (required by law to be levied for the poor fund) in accordance with the budget and such additional emergency warrants as can be issued which may be freely converted into cash by the recipient without discount. The expenditure from the poor fund in payment of interest on registered warrants drawn against the fund is a lawful expenditure from the fund." State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. The state board of public welfare is only required to make grants to the county when it is demonstrated to the board that the county through the exercise of its statutory powers can no longer raise the necessary funds to provide general relief. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

349A.29. Certification for relief employment—investigation of eligibility. For such time as the federal government shall require, it shall be the duty and responsibility of the state and the county public welfare department to make all investigations and certifications required by federal employment agencies in respect to the eligibility of employable persons for employment on government emergency work projects. [L. '37, Ch. 82, Part II, § VIII. Approved and in effect March 4, 1937.

349A.30. Grants from state funds to counties—use thereof—emergency budget—county commissioners to adopt—audit—when required—aid for county commissioners—application. If the whole of a six mill levy together with the whole of the per capita tax authorized by said section 4465.4, revised codes of 1935, and the income to the county poor fund from all other sources shall prove inadequate to pay for the general relief in the county actually necessary and to meet the county's proportionate share of old age assistance, aid to needy dependent children, aid to needy blind and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county; and if warrants upon the county poor fund can no longer lawfully be issued to meet these charges; and if the board of county commissioners is unable

to declare an emergency for the purpose of providing additional funds or to provide additional funds from any other source; and if the county has in all respects expended the county poor fund only for lawful purposes; and if all of these conditions actually exist in any county of the state, then the state department of public welfare shall, insofar as it has funds available, come to the assistance of such county, in the following manner:

(a) When the county in question has submitted proof to the state board of public welfare through such reports as it may require and through other evidence that may be deemed necessary, that these conditions exist, then the state board may authorize the state administrator to issue a check to the county treasurer of the county for general relief purposes, and the county department of public welfare shall make the disbursements of these state funds for general relief purposes within the county. These grants-in-aid from the state department may be used for any relief activity lawfully conducted by the county, including medical aid, hospitalization and institutional care; but no part thereof may be used, directly or indirectly, to pay for the erection or improvement of any county building or for furniture, fixtures, appliances or equipment for any such building.

Immediately upon receiving notice that such grant-in-aid has been made by the state department, it shall be the duty of the board of county commissioners to adopt an emergency budget in accordance with the provisions of section 4613.6 but without being required to publish any notice of intention to adopt such emergency budget or to hold a hearing thereon. This emergency budget shall appropriate the whole amount of the general relief grant from the state department for the various classes of expenditures from the poor fund for which the grant-in-aid was made by the state department. The money received through such general relief grant from the state department shall be placed in a special poor fund account kept separate and distinct from the poor fund accounts arising under the original poor fund budget, and all expenditures from this special poor fund account shall be made by a separate series of warrants or checks.

(b) In the case of a county that is unable to meet its proportionate share of old age assistance, aid to needy dependent children, aid to needy blind and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county, the state department of public welfare shall in addition to proofs required for making a general relief grant also require an audit by

the state examiner's office. If this audit proves to the satisfaction of the state board of public welfare that a county is unable to reimburse the state department for its proportionate share of these forms of assistance, then the state board of public welfare shall cause full entries of its findings to be made on its minutes showing the name of the county concerned and the amount of each class of reimbursement that the county is unable to make to the state department. The state administrator of public welfare shall thereupon notify the county concerned of the action taken.

(c) In the event that a county is found to be eligible to receive aid under the provisions of this section, and the said county is unable to issue bonds or register warrants by reason of being beyond its constitutional limit of indebtedness, the administrator of the state board is directed to make grants to such county in advance of the month for which such grant is to be distributed by the county in payments, after due consideration has been given various factors such as the amount of the grant requested by the county, the number of individual payments to be made and the number of recipients receiving aid through other governmental agencies. The board of county commissioners of such county shall, not less than ten (10) days before the end of the month preceding the month for which the grant is requested, make formal written application to the state department of public welfare for such grant, stating the amount needed and such other facts pertinent to the application. [L. '39, Ch. 129, § 14, approved and in effect March 9, 1939, amending L. '37, § 82, Part II, § IX, approved and in effect March 4, 1937.

1938. This section means that one of the conditions precedent to the county welfare board's obtaining aid from the state board is that the county commissioners must establish all budgets that are needed which are within the authority found in the statutes of the state. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. The state board of public welfare is only required to make grants to the county when it is demonstrated to the board that the county through the exercise of its statutory powers can no longer raise the necessary funds to provide general relief. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. "Before the county can secure aid from the state it must issue warrants in anticipation of the revenues derived from the six mill levy (required by law to be levied for the poor fund) in accordance with the budget and such additional emergency warrants as can be issued which may be freely converted into cash by the recipient without any discount. The expenditure from the poor fund in payment of interest on registered warrants drawn

against the fund is a lawful expenditure from the fund." State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. Where the county has improperly made excessive appropriations from the poor fund for general relief, to compel the state board of public welfare to make grants to the county to pay the whole cost and expense of general relief, the state board can compel such excesses to be transferred back to the poor fund for general relief before the county is entitled to a grant in aid. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

349A.31. Application for relief—pauper's oath—forms—who to furnish. Each applicant for general relief shall make application to the county department of public welfare and the application shall be made in the manner and on the form prescribed by the state department, provided however, that no application form shall contain what is commonly known as "the pauper's oath".

Blank forms for applications and other records required by the state department shall be printed and furnished by the state department to the county department. [L. '37, Ch. 82, Part II, § X. Approved and in effect March 4, 1937.

349A.32. Investigations of relief applications—temporary assistance. Whenever a county public welfare department receives an application for general relief assistance, an investigation and record shall be promptly made of the circumstances of the applicant. Investigations in respect to applications for general relief assistance shall be made by the staff-worker (or investigator) of the county public welfare department. If there is self-evident evidence that the applicant is in immediate need of assistance, the county department shall issue temporary assistance pending such time as a complete investigation can be made. [L. '37, Ch. 82, Part II, § XI. Approved and in effect March 4, 1937.

349A.33. Granting of assistance—amount—form. Upon the completion of an investigation the county public welfare shall decide whether the applicant is eligible for relief assistance, the amount of the assistance and the date on which the assistance shall begin.

The amount of relief assistance granted any person or family shall, subject to the regulations and standards of the state department, be determined by the county department with due regard to the resources and necessary expenditures of the individual or family and the conditions existing in each case, and shall be sufficient to provide each person or family with a reasonable subsistence compatible with decency and health.

As heretofore provided in this part, relief disbursements made by the county department to relief recipients shall be by warrant or check, payable from either the county or state funds, as available or as provided. [L. '37, Ch. 82, Part II, § XII. Approved and in effect March 4, 1937.

1938. That the poor fund, against which warrants or checks would be drawn, is exhausted does not furnish a reason why they should not be drawn, unless they would entail tax levies prohibited by the constitution. State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305.

349A.34. Repeal. [L. '37, Ch. 82, Part II, § XIII] was repealed by L. '39, Ch. 129, § 16, approved and in effect March 9, 1939.

1938. "Before the county can secure aid from the state it must issue warrants in anticipation of the revenues derived from the six mill levy (required by law to be levied for the poor fund) in accordance with the budget and such additional emergency warrants as can be issued which may be freely converted into cash by the recipient without any discount. The expenditure from the poor fund in payment of interest on registered warrants drawn against the fund is a lawful expenditure from the fund." State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. The state board of public welfare is only required to make grants to the county when it is demonstrated to the board that the county through the exercise of its statutory powers can no longer raise the necessary funds to provide general relief. State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

1938. While this section refers to section 10, it was obviously intended to refer to section 9 (§ 349A.30). State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589.

PART III

To Provide for Old Age Assistance To Aged Persons In Need, In Conformity With Title I of the Federal Social Security Act of 1935, or As Amended.

349A.35. Provision for administration—old age assistance—local—uniformity required—copies of act and blanks—state to furnish—rules—definition. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of old age assistance under the powers, duties and functions as prescribed in Part I of this act [349A.1-349A.21].

(b) The county department of public welfare shall be charged with the local administration and supervision of old age assistance, subject to the powers, duties and functions prescribed for the county department in Part I of this act [349A.1-394A.21].

(c) It is hereby mandatory and required that the state plan and operation of old age

assistance shall be in effect in each and every county of the state and the administration and supervision of old age assistance shall be uniform throughout the several counties of the state.

(d) The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports and such other forms as may be necessary in relation to old age assistance.

(e) All rules and regulations of the federal social security board and the state department of public welfare made under this act shall be binding upon the county departments of public welfare.

(f) Definition, old age assistance as used in this part means money payments to aged needy individuals. [L. '37, Ch. 82, Part III, § I. Approved and in effect March 4, 1937.

349A.36. Eligibility requirements for old age assistance—age—income—residence—inmate of public institution—property assignment—institutional care—need. Old age assistance shall be granted any person who:

(a) Has attained the age of sixty-five (65) years.

(b) Has income which is inadequate to provide a reasonable subsistence compatible with decency and health.

(c) Has been a resident of the state of Montana for at least five (5) years during the nine (9) years immediately preceding his application for old age assistance.

(d) Has resided in and been an inhabitant of the state and county in which application is made for at least one (1) year immediately preceding the date of the application. Any person otherwise qualified who has resided in the state for five (5) years or more during the nine (9) years immediately preceding the application, one (1) year of which state residence shall have been immediately prior to the date of the application, and who has no legal county residence, shall file his application in the county in which he is residing, and his assistance, shall be paid entirely from state funds until he can qualify as having a legal residence in the said county. For the purpose of this act, every person who has resided one (1) year or more in any county in this state shall thereby acquire a legal residence in such county, which he shall retain until he has acquired a legal residence elsewhere, or until he has been absent voluntarily and continuously for one (1) year therefrom.

(e) Is not at the time of receiving assistance an inmate of any public institution,

except in the case of temporary medical or surgical care in a hospital.

(f) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this act at any time within two years immediately prior to the filing of application for assistance pursuant to the provisions of this act.

(g) Is not because of his physical or mental condition in need of continued care in a public institution. [L. '37, Ch. 82, Part III, § II. Approved and in effect March 4, 1937.

349A.37. Amount of assistance—standards—who to determine. The amount of old age assistance granted any person shall, subject to the regulations and standards of the state department, be determined by the county department with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case and shall be sufficient, when added to all other income and support of the recipient, to provide such person with a reasonable subsistence compatible with decency and health. [L. '37, Ch. 82, Part III, § III. Approved and in effect March 4, 1937.

349A.38. Application for assistance—contents—inmate of institution. Application for assistance under this act shall be made by the person seeking such assistance to the county office of the county department in the county in which the person is a resident, or is establishing residence. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the state department. Such application shall contain a statement of the amount of property, both personal and real, in which the applicant has an interest and of all income which he may have at the time of the filing of the application, and such other information as may be required by the state department. An inmate of a public institution of a correctional, custodial, or curative character may make an application while in such a home or institution, but the assistance, if granted, shall not be paid until after he ceases to be such an inmate. Assistance shall be granted on official approval of the application. [L. '37, Ch. 82, Part III, § IV. Approved and in effect March 4, 1937.

349A.39. County share of participation—reimbursement. Each county department shall reimburse the state department in the amount of sixteen and two-thirds (16-2/3%) per centum of the approved old age assistance grants to persons in the county each month. Such reimbursements shall be credited to the old age assistance account of the state department. [L. '37, Ch. 82, Part III, § V. Approved and in effect March 4, 1937.

349A.40. Investigation of applications—witnesses—subpoena—eligibility—amount of assistance—county to determine. Whenever a county public welfare department receives an application for an old age assistance grant, an investigation and record shall be promptly made of the circumstances of the applicant. The object of such investigation shall be to ascertain the facts supporting the application made under this act and such other information as may be required by the rules of the state public welfare department. The county board and the state department shall have the power to issue subpoenas for witnesses and compel their attendance and the production of papers and writings. The investigation of each application for old age assistance shall be conducted by the staff workers (or investigators) of the county department.

Upon the completion of such investigation the county public welfare board shall decide whether the applicant is eligible for and should receive an old age assistance grant under this act, the amount of the assistance, and the date on which the assistance shall begin. It shall make an award which shall be binding upon the county board and be complied with by such county board until modified or vacated. It shall notify the applicant of its decision in writing. [L. '37, Ch. 82, Part III, § VI. Approved and in effect March 4, 1937.

349A.41. Funeral expenses—source of payment. Upon the death of a person who has been receiving old age assistance, funeral expenses shall be paid by the board of county commissioners from the county poor fund, if the estate of the deceased is insufficient to pay the same. Grants from the old age assistance account are not allowable for funeral expenses. [L. '37, Ch. 82, Part III, § VII. Approved and in effect March 4, 1937.

349A.42. Assistance may be paid to guardian—appointment. If the person receiving old age assistance is, in the opinion of the county public welfare department, found incapable of taking proper care of himself or his money, the county public welfare board may make the necessary legal arrangements for the appointment of a guardian, and shall then direct that the old age assistance payments be paid to the guardian for the benefit of such irresponsible recipient. [L. '37, Ch. 82, Part III, § VIII. Approved and in effect March 4, 1937.

349A.43. Subsequent increase of income—duty of recipient—excess—return. If, at any time during the continuance of old age assistance, the recipient thereof or the husband or wife (if living together) of the recipient, becomes possessed of any property or income

in excess of the amount enjoyed at the time of the granting of the assistance, it shall be the duty of the recipient immediately to notify the county department of the receipt and possession of such property or income, and the county board may, on inquiry, either cancel the assistance or vary the amount thereof in accordance with circumstances, any excess assistance heretofore paid shall be returned to the state and the county in proportion to the amount of the assistance paid by each respectively, and be recoverable as a debt due the state and the county. If federal funds have been involved, fifty (50%) per cent of any recovery shall be paid to the United States government, if required by federal law. [L. '37, Ch. 82, Part III, § IX. Approved and in effect March 4, 1937.

349A.44. Periodic review of assistance grants—change or withdrawal—suspension or revocation. All old age assistance grants made under this act shall be reviewed and reconsidered by the county public welfare department quarterly or not less than four (4) times within each calendar year. After such further investigation as the county board may deem necessary or the state board may require, the amount and manner of giving the assistance may be changed or the assistance may be withdrawn if such authority finds that the recipient's circumstances have changed sufficiently to warrant such action. It shall be within the power of the county board at any time to cancel and revoke assistance for cause, and it may for cause suspend payments for assistance for such periods as it may deem proper, subject to review or final approval by the state department. [L. '37, Ch. 82, Part III, § X. Approved and in effect March 4, 1937.

349A.45. Recovery from the estate—disposition of collection. On the death of any recipient of old age assistance, the total amount of assistance paid under this act shall be allowed as a claim against the estate of such person after funeral expenses not to exceed one hundred (\$100.00) dollars have been paid and after the expense of administering the estate has been paid. No claim shall be enforced against any real estate of a recipient while it is occupied by the surviving spouse, or dependent.

If the federal law shall so require, the federal government shall be entitled to a share of any amounts collected from recipients or from their estates equal to not more than one-half of the amount collected and the amount due the United States shall be paid promptly by the state to the United States government. The remaining one-half of the amount collected shall be distributed to the state and county in

proportion to the total amount of such assistance paid by each. [L. '37, Ch. 82, Part III, § XI. Approved and in effect March 4, 1937.

349A.46. Change of residence of person receiving old age assistance — removal to another county. A recipient who moves to another county in this state shall continue to receive assistance, with the approval of the state department, and the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of six months after which time the county to which he has moved shall be charged therefor; the county from which he has moved shall transfer the records of the case of such recipient to the county department of the county to which he has moved on notification so to do by the state department. [L. '37, Ch. 82, Part III, § XII. Approved and in effect March 4, 1937.

349A.46a. Payment of old age assistance—tax levies. In each county old age assistance shall be paid from the county poor fund. It is hereby made the duty of the appropriate authority in each county to make a levy in an amount not prohibited by law, so as to make available to the order of the county old age pension commission such a sum as may be needed for old age assistance and include such sum in the taxes to be levied in each county. [L. '37, Ch. 27, § 1. Approved and in effect February 17, 1937, expiry date of act May 1, 1937.

Note. Although this act (§§ 349A.46a-h) expired by limitation May 1, 1937, it is here inserted in view of the possibility that some rights or liabilities may have accrued or been affected while it was in force.

349A.46b. Payment by state old age pension commission to county commissions — when available to grantee — medium of payment. Payments of old age assistance shall be made by the state old age pension commission direct to the several county old age pension commissions of the several counties of the state. The payment of such old age assistance shall be issued in the full approved amount for each eligible, approved grantee, and, if possible, shall be available to such grantee not later than the tenth day of each month. All such old age assistance payments shall represent cash on demand or full par value to the recipient. [L. '37, Ch. 27, § 2. Approved and in effect February 17, 1937. Expiry date of act, May 1, 1937.

349A.46c. Certification of eligibles by county commission—transmission of money by state commission. The county old age pension commission shall not later than the twentieth day of the month preceding the month of payment

certify to the state old age pension commission the case number, name, and amount to be paid to each of the grantees. The state old age pension commission is hereby empowered and ordered to transmit to the county old age pension commission of the several counties of the state of Montana not later than the third day of each month, during the life of this act, a sum of money equal to the amount necessary to pay each grantee the amount due him or her as shown by the list of grantees herein in this section mentioned. [L. '37, Ch. 27, § 3. Approved and in effect February 17, 1937, expiry date of act May 1, 1937.

349A.46d. Warrants where county funds insufficient — reimbursement by state commission and payment — procedure. It is hereby provided that any county old age pension commission which has paid old age assistance grants by warrants drawn on the county poor fund and which warrants were registered for want of funds shall be reimbursed by the state old age pension commission in an amount equal to the amount of the warrants registered, which were drawn exclusively for the payment of approved old age pension grantees and the state old age pension commission is hereby empowered and ordered to make such payment, but no payment shall be made by the state old age pension commission for any accrued interest on such warrants but shall make payment only in the amount as set forth in the warrants. Before such payment is made by the state old age pension commission the county old age pension commission shall forward to the state old age pension commission a statement giving the case number, name and amount paid to each grantee for which warrants were registered.

When said funds have been received by the county old age pension commission the commission shall, at once, issue a call for payment of all registered warrants drawn on the county poor fund which have been issued exclusively for payments to old age assistance grantees, when said warrants are called and paid by the county old age pension commission out of the funds remitted to them by the state old age pension commission for the redemption or payment of the said warrants the said paid warrants shall be by the county old age pension commission forwarded by registered mail to the state old age pension commission for the purpose of federal inspection after which inspection the said warrants shall be by the state old age pension commission returned to the county old age pension commission from which they were received. [L. '37, Ch. 27, § 4. Approved and in effect February 17, 1937, expiry date of act May 1, 1937.

349A.46e. Records and accounts. The county old age pension commission shall keep such records and accounts in relation to old age assistance as the state old age pension commission shall prescribe and the state old age pension commission shall keep such records and accounts as shall be designated by the United States government. [L. '37, Ch. 27, § 5. Approved and in effect February 17, 1937, and suspending the operation of [section] 335.25 until the expiry of this act, May 1, 1937.

349A.46f. Emergency act — purpose — construction. This act shall be deemed to be an emergency act for the purpose of making certain that current payments shall be made to the recipient of old age pensions in the state of Montana to the end that want and suffering may be alleviated among the grantees of the old age pension in Montana and this act shall be liberally construed to the end that the purposes set forth herein shall be performed. [L. '37, Ch. 27, § 6. Approved and in effect February 17, 1937, expiring May 1, 1937.

349A.46g. Other acts suspended. The provisions of sections 335.25, 335.26 and 335.27 of chapter 33 of the political code of Montana, 1935, and section 4756, chapter 362 of the political code of Montana, 1935, and all other acts or parts of act in conflict with the provisions of this act shall be and are hereby declared to be inoperative as against any of the provisions of this act, during the time this act shall be in force and effect. [L. '37, Ch. 27, § 7. Approved and in effect February 17, 1937, expiring May 1, 1937.

349A.46h. Expiry date of act. This act shall be in full force and effect upon its passage and approval until May 1st, 1937 after which date the provisions of this act shall become inoperative. [L. '37, Ch. 27, § 8. Approved and in effect February 17, 1937.

PART IV

To Provide for Aid To Needy Dependent Children, In Conformity With Part IV of the Federal Social Security Act of 1935, Or As Amended.

349A.47. Definition—dependent child. (a) The term “dependent child” means a child under the age of sixteen who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, in a place of residence maintained by one or more of such relatives as his or their own home.

If and when the federal social security act is amended to define the term “dependent child” as a child under the age of eighteen years, then the term “dependent child” hereinabove defined shall mean a child under the age of eighteen years. [L. '39, Ch. 129, § 17, approved and in effect March 9, 1939, amending L. '37, Ch. 82, Part IV, § I, approved and in effect March 4, 1937.

349A.48. Administration—local administration—uniformity of plan—copies of act and blanks—rules—cooperation with federal government—reports to federal government—publication—county administration. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of aid to dependent children under the powers, duties and functions as prescribed in Part I of this act [349A.1-349A.21].

(b) The county department of public welfare shall be charged with the local administration and supervision of aid to dependent children, subject to the powers, duties and functions prescribed for the county department in Part I of this act [349A.1-349A.21].

(c) It is hereby mandatory and required that the state plan and operation of aid to dependent children shall be in effect in each and every county of the state and the administration and supervision of aid to dependent children shall be uniform throughout the several counties of the state.

(d) The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports and such other forms as may be necessary in relation to aid to dependent children.

(e) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare. The state board of public welfare shall make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this part.

(f) The state department shall cooperate with the federal government in matters of mutual concern pertaining to assistance to dependent children, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance.

(g) The state department shall make such reports in such form and containing such information as the federal government may from

time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports.

(h) The state department shall publish an annual report and such interim reports as may be necessary or required.

(i) The county department of public welfare shall administer the provisions of this part in the respective counties subject to the rules and regulations prescribed by the state department pursuant to the provisions of this part. [L. '37, Ch. 82, Part IV, § II. Approved and in effect March 4, 1937.]

349A.49. Eligibility for assistance in aid to dependent children—family home—need of assistance—residence—payable by state or county—institutional care—need—alien parents. Assistance shall be granted under this part to any needy dependent child—as defined in section I [349A.47]—who:

(a) Is living in a suitable family home meeting the standards of care and health fixed by the laws of this state and the rules and standards of the state department thereunder.

(b) Is in need of such assistance—as defined in section I [349A.47].

(c) Who has resided in the state for one year immediately preceding the application for such assistance; or who was born within the state within one year immediately preceding the application, if the mother has resided in the state for one year immediately preceding the birth of said child. Any dependent child meeting the above requirements shall be entitled to the assistance herein provided for but the state shall pay the full amount of such assistance unless and until the child has been a resident of the county for a period of six months, or, unless the child is less than six months old and its mother shall have resided in the county before the birth of such child for a period of time which added to the period of time of the residence of such child in the county shall constitute a total of six months.

(d) Is not because of a physical or mental condition in need of continued care in a public institution.

(e) Whose parents are not aliens illegally within the United States. [L. '37, Ch. 82, Part IV, § III. Approved and in effect March 4, 1937.]

349A.50. Application for assistance—contents—by whom made—one application for several children. Application for assistance under this part shall be made to the county department of the county in which the dependent child resides or shall reside. The

application shall be in writing or reduced to writing in the manner and upon the form prescribed by the state department. Such application shall be made by the person having custody of the dependent child and shall contain information as to the age and residence of the child and such other information as may be required by the rules and regulations of the state department. One application may be made for several children of the same family if they reside with the same person. [L. '37, Ch. 82, Part IV, § IV. Approved and in effect March 4, 1937.]

349A.51. Investigation of applications—visitation of home recommendations and information from official. Whenever a county department receives a notification of the dependency of a child or an application for assistance, an investigation and record shall promptly be made of the circumstances in order to ascertain the dependency of the child and the facts supporting the application and in order to obtain such other information as may be required by the rules of the state department.

The investigation shall include a visit to the home of the child and of the person who will have the custody of the child during the time assistance is granted, unless a county staff worker or member of the county welfare board shall have personal knowledge of such home. All such investigations shall be conducted by the staff workers (or investigators) of the county department.

Such investigations shall also contain information and recommendations from any available officials in the county representing child welfare services and nurses representing the child welfare division of the state board of health. [L. '37, Ch. 82, Part IV, § V. Approved and in effect March 4, 1937.]

349A.52. Granting of assistance and amount of eligibility—determination by county board—decision—notice—payments—basis of decision—determination of amount. Upon the completion of such investigation the county public welfare board shall decide whether the child is eligible for assistance under the provisions of this act, and determine in accordance with the rules and regulations of the state department the amount of such assistance and the date on which such assistance shall begin. The county department shall notify the person having custody of the child of its decision. Such assistance shall be paid monthly or more often to the person having custody of the child. The county public welfare board shall base its decision in regard to such assistance upon the recommendations in the investigation

report, if such recommendations are according to the rules and standards of the state department.

The amount of assistance which shall be granted for any dependent child shall be determined by the county board with due regard to the resources and necessary expenditures of the family and the conditions existing in each case and in accordance with the rules and regulations made by the state department, and shall be sufficient, when added to all other income and support available to the child, to provide such child with a reasonable subsistence compatible with decency and health. [L. '37, Ch. 82, Part IV, § VI, approved and in effect March 4, 1937.

349A.53. County share of participation — increase in federal aid — decrease in county disbursement. Each county department shall reimburse the state department in the amount of one-half of the approved aid to dependent children grants after the share provided by the federal government is deducted to persons in the county each month. Such reimbursements shall be credited to the aid to dependent children account of the state department.

If and when the federal grant for aid to dependent children is increased from 33-1/3% of the total payments to 50% of the total payments, the reimbursement from each county department to the state department of public welfare shall be decreased to 16-2/3% of the total payments. If the federal grant is increased by some other percentage, the percentage added to the federal grant shall be deducted from the percentage of reimbursement to be made by the counties. These reimbursements shall be credited to the aid to dependent children account of the state department as heretofore. [L. '39, Ch. 129, § 18, approved and in effect March 9, 1939, amending L. '37, Ch. 82, Part IV, § VII, approved and in effect March 4, 1937.

349A.54. Periodic reconsideration and changes in amount of assistance. All assistance grants made under this part shall be reconsidered by the county department as frequently as may be required by the rules of the state department. After such further investigation as the county department may deem necessary or the state department may require, the amount of assistance may be changed or assistance may be entirely withdrawn if the state or county departments find that the child's circumstances have altered sufficiently to warrant such action. [L. '37, Ch. 82, Part IV, § VIII. Approved and in effect March 4, 1937.

349A.55. Removal to another county — obligations of county from which child moves.

Any child qualified for and receiving assistance pursuant to the provisions of this part in any county in this state who moves or is taken to another county in this state shall be entitled to receive assistance in the county to which he has moved or is taken and the county department of the county from which he has moved shall transfer all necessary records relating to the child to the county department of the county to which he has moved. The county from which the child moves shall pay the county share of the assistance for a period of six (6) months. [L. '37, Ch. 82, Part IV, § IX. Approved and in effect March 4, 1937.

PART V

To Provide for Aid To Needy Blind Individuals In Conformity With Title X of the Federal Social Security Act of 1935, or As Amended.

349A.56. Definitions. As used in this title.

(a) "Aid to blind", (or assistance) means money payments to blind persons in need.

(b) "Supplementary services" means services other than money payments.

(c) "Ophthalmologist" means a physician licensed to practice medicine in the state of Montana and who is actively engaged in the treatment of diseases of the human eye. [L. '37, Ch. 82, Part V, § I. Approved and in effect March 4, 1937.

349A.57. Administration — local — uniform state plan—copies of act and blanks—rules—cooperation with federal government—reports — publication — county administration—visual acuity of applicant—measurement—examiners—fees—cooperation with other agencies. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of aid to blind under the powers, duties and functions as prescribed in Part I of this act. [349A.1-349A.21].

(b) The county department of public welfare shall be charged with the local administration and supervision of aid to blind, subject to the powers, duties and functions prescribed for the county department in Part I of this act. [349A.1-349A.21].

(c) It is hereby mandatory and required that the state plan and operation of aid to the blind shall be in effect in each and every county of the state and the administration and supervision of aid to the blind shall be uniform throughout the several counties of the state.

(d) The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and

supply to the county welfare departments blanks of applications, reports and such other forms as may be necessary in relation to aid to the blind.

(e) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare. The state board of public welfare shall make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this Part.

(f) The state department shall cooperate with the federal government in matters of mutual concern pertaining to assistance to the blind, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance.

(g) The state department shall make such reports in such forms and containing such information as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports.

(h) The state department shall publish an annual report and such interim reports as may be necessary or required.

(i) The county department of public welfare shall administer the provisions of this Part in the respective counties subject to the rules and regulations prescribed by the state department pursuant to the provisions of this Part. [349A.56-349A.68].

(j) The state department shall designate the procedure to be followed in securing a competent medical examination for the purpose of determining blindness in the individual applicant for assistance.

(k) The state department shall promulgate rules and regulations stating, in term of ophthalmic measurements, the amount of visual acuity which an applicant may have and still be eligible for assistance under this Part. [349A.56-349A.68].

(L) The state department shall designate a suitable number of ophthalmologists, duly licensed to practice medicine in Montana and actively engaged in the treatment of diseases of the human eye, to examine applicants and recipients of assistance to the blind.

(m) The state department shall fix and pay to ophthalmologists fees for examinations of applicants.

(n) The state department shall develop or cooperate with other agencies in developing measures for the prevention of blindness, the restoration of eyesight, and the vocational

adjustment of blind persons. [L. '37, Ch. 82, Part V, § II. Approved and in effect March 4, 1937.

349A.58. Eligibility for aid to the needy blind—vision of applicant—inadequate income—other assistance—residence in county—inmate of institution—property assignment—institutional care—need. Aid shall be granted under this Part to any person who:

(a) Has no vision or whose vision, with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential and who has been examined and so certified by a fully licensed ophthalmologist.

(b) Has income which, when added to the contribution in money, substance or service from legally responsible relatives or others, is inadequate to provide a reasonable subsistence compatible with decency and health.

(c) Is not receiving old age assistance or aid to dependent children for himself/or herself.

(d) Has resided in and been an inhabitant of the county in which application is made for at least one (1) year immediately preceding the date of the application. Any person otherwise qualified who has resided in the state for five (5) years or more within the nine (9) years immediately preceding the application, one year (1) of which state residence shall have been immediately prior to the date of the application, and who has no legal county residence, shall file his application in the county in which he is residing, and his assistance shall be paid entirely from state funds until he can qualify as having a legal residence in the said county. For the purpose of this act, every person who has resided one (1) year or more in any county in this state shall thereby acquire a legal residence in such county, which he shall retain until he has acquired a legal residence elsewhere, or until he has been absent voluntarily and continuously for one (1) year therefrom.

(e) Is not at the time of receiving assistance an inmate of any public institution, except in the case of temporary medical or surgical care in a hospital.

(f) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this act at any time within two years immediately prior to the filing of application for assistance pursuant to the provisions of this act.

(g) Is not because of his physical or mental condition in need of continued care in a public institution. [L. '37, Ch. 82, Part V, § III. Approved and in effect March 4, 1937.

349A.59. Amount of assistance—limitations.

The amount of assistance granted any blind person shall, subject to the regulations and standards of the state department, be determined by the county department with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case and shall be sufficient, when added to all other income and support of the recipient, to provide such person with a reasonable subsistence compatible with decency and health, except that the amount of such assistance shall not exceed the sum of thirty dollars (\$30.00) for any one month, provided, however, that the state department may authorize grants or supplementary grants from state funds to be used in supplementary services such as the prevention or treatment of blindness. [L. '37, Ch. 82, Part V, § IV. Approved and in effect March 4, 1937.]

349A.60. Application for assistance — contents — inmate of institution.

Application for assistance under this Part shall be made by the person seeking such assistance to the county office of the county department in the county in which the person is a resident, or is establishing residence. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the state department. Such application shall contain a statement of the amount of property, both personal and real, in which the applicant has an interest and of all income which he may have at the time of the filing of the application, and such other information as may be required by the state department. An inmate of a public institution of a correctional, custodial, or curative character may make an application while in such home or institution, but the assistance, if granted, shall not be paid until after he ceases to be such an inmate. The application form may be filled in and written by a person authorized by the county department. If the applicant is unable to sign his/her name on the application a duly witnessed mark may be used. [L. '37, Ch. 82, Part V, § V. Approved and in effect March 4, 1937.]

349A.61. Investigation of applications—examination by ophthalmologist — rehabilitation report. Whenever a county public welfare department receives an application for assistance under this Part, an investigation and record shall be promptly made of the circumstances of the applicant. The object of such investigation shall be to ascertain the facts supporting the application made under this Part [349A.56-349A.68] and such other information as may be required by the rules of the state public welfare department. The

investigation of each application for aid to the blind shall be conducted by the staff workers (or investigators) of the county department.

A certified report from the examining physician must be attached to the investigation report. No application shall be approved until the applicant has been examined by an ophthalmologist designated or approved by the state department to make such examinations. The examining ophthalmologist shall certify in writing upon forms provided by the state department the findings of the examination.

The investigation report should contain an opinion from the bureau of vocational rehabilitation officials relative to such supplementary services as may be necessary and possible in respect to rehabilitation. Supplementary services in respect to treatment or prevention of blindness may be included in the examining physician's report. [L. '37, Ch. 82, Part V, § VI. Approved and in effect March 4, 1937.]

349A.62. Granting of aid—county board's duty. Upon the completion of such investigation the county board shall decide whether the applicant is eligible for assistance under the provisions of this Part, and determine the amount of such assistance and the date on which such assistance shall begin. The county department shall notify the applicant of its decision. Such assistance shall be paid monthly to the applicant. [L. '37, Ch. 82, Part V, § VII. Approved and in effect March 4, 1937.]

349A.63. Periodic reconsideration and changes in amount of assistance — re-examination of recipient. All assistance grants made under this Part [349A.56-349A.68] shall be reconsidered by the county department as frequently as may be required by the rules of the state department. After such further investigation as the county department may deem necessary or the state department may require, the amount of assistance may be changed or assistance may be entirely withdrawn if the state or county departments find that the person's circumstances have altered sufficiently to warrant such action.

A recipient shall submit to a re-examination as to his eyesight when required to do so by the state department. He shall also furnish any information required by the state department. [L. '37, Ch. 82, Part V, § VIII. Approved and in effect March 4, 1937.]

349A.64. Expenses for treatment — services to aid vision. On the basis of the findings of the ophthalmologist's examination, supplementary services may be authorized by the state department to any applicant or recipient

who is in need of treatment either to prevent blindness or to restore his eyesight whether or not he is blind, if he is otherwise qualified for assistance under this Part [349A.56-349A.68]. The supplementary services may include necessary traveling and other expenses to receive treatment from a hospital or clinic designated by the state department. [L. '37, Ch. 82, Part V, § IX. Approved and in effect March 4, 1937.

349A.65. County share of participation.

Each county department shall reimburse the state department in the amount of sixteen and two-thirds (16-2/3) per centum of the approved aid to blind grants to persons in the county each month. Such reimbursements shall be credited to the aid blind account of the state department. [L. '37, Ch. 82, Part V, § X. Approved and in effect March 4, 1937.

349A.66. Change of residence of recipient receiving aid to blind—removal to another county—obligation of county removed from.

Any person qualified for and receiving assistance hereunder in any county in this state who removes to another county in the state and who shall give evidence beforehand to the county board relative to the necessity of such move, shall be entitled to receive assistance under the provisions of this part after a six (6) months residence in the county to which such person has removed, and the county of first residence of such person shall continue his assistance for six (6) months and until the aforesaid residence has been established by him in the second county. [L. '37, Ch. 82, Part V, § XI. Approved and in effect March 4, 1937.

349A.67. Recovery from a recipient—addition to property—assistance—change or cancellation—more than required for recovery. If at any time during the continuance of aid to blind assistance the recipient thereof becomes possessed of any property or income in excess of the amount stated in the application, it shall be the duty of the recipient immediately to notify the county department of the receipt or possession of such property or income and the county department may, after investigation, either cancel the assistance or alter the amount thereof in accordance with the circumstances.

Any assistance paid after the recipient has come into possession of such property or income and in excess of his need shall be recoverable by the state as a debt due to the state. [L. '37, Ch. 82, Part V, § XII. Approved and in effect March 4, 1937.

349A.68. Assistance may be paid to guardian—appointment. If the person receiving

aid to blind is, in the opinion of the county public welfare department, found incapable of taking proper care of himself or his money, the county public welfare board may take the necessary legal arrangements for the appointment of a guardian, and shall then direct that the aid to blind payments be paid to the guardian for the benefit of such irresponsible recipient. [L. '37, Ch. 82, Part V, § XIII. Approved and in effect March 4, 1937.

PART VI

To Provide for Services for Crippled Children and Child Welfare Services, In Conformity With Title V, Parts 2 and 3, of the Federal Social Security Act of 1935, or As Amended, and Transferring the Powers and Duties of the State Bureau of Child Protection and the Orthopedic Commission to the Authority and Supervision of the State Department of Public Welfare, and Repealing Sections of Law in Conflict Herewith.

349A.69. Effective date. Since the bureau of child protection and the orthopedic commission are operating federal-state programs on established budgets which expire at the end of the fiscal year on June 30th, 1937, it is hereby provided that the powers and duties of said state bureau and commission will not be transferred to the department of public welfare until July 1st, 1937. [L. '37, Ch. 82, Part VI, § I. Approved March 4, 1937.

349A.70. Definition as used in this Part.

(a) Services for crippled children means: To extend, and improve services (especially in rural areas and in areas suffering from severe economic distress) for locating crippled children, and for providing medical, surgical, corrective and other services and care, and facilities for diagnosis, hospitalization and after care for children who are crippled or who are suffering from conditions which lead to crippling, and cooperation with medical, health and nursing agencies providing for vocational rehabilitation of physically handicapped children.

(b) Child welfare services means: The establishing, extending and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of homeless, dependent and neglected children, and children in danger of becoming delinquent.

(c) Child welfare worker means: Staff personnel who have had education and training in the field of child welfare and who are qualified and accepted as such in conformity with the standards established by the state

department of public welfare. [L. '37, Ch. 82, Part VI, § II. Approved March 4, 1937.]

349A.71. Organization and administration of activities. Services for crippled children, child welfare services and child protection functions shall be organized under and administered and supervised by the state department of public welfare, subject to the general administration and regulations of the state department and the powers and duties thereof as established in Part I [349A.1-349A.21], and providing for cooperation and exchange of services with the child welfare division of the board of health and vocational rehabilitation bureau. [L. '37, Ch. 82, Part VI, § III. Approved March 4, 1937.]

349A.72. Powers and duties of the state department—superseded agencies—personnel—rules and regulations—activities—services—cripples—law enforcement—rehabilitated children—foster placements—taking charge over objection—assisting other agencies. Subject to the authority and regulations of the state department and in cooperation with the federal children's bureau, the state department shall:

(a) Perform the duties and have all the powers formerly invested in and exercised by the state bureau of child protection and the Montana orthopedic commission and the state board of charities and reforms.

(b) Select and appoint, from a qualified list, such personnel as are necessary to efficiently supervise and perform the purposes of this Part [349A.69-349A.73].

(c) Subject to the approval of the state board, make such rules and regulations as are necessary to carry out the purposes of this Part [349A.69-349A.73].

(d) Administer or supervise all child welfare activities of the state except such child welfare activities as are administered by the state board of health.

(e) Make provision for establishing and strengthening child welfare services, including protective services and for care of children in family foster homes. When funds are available for that purpose, the child welfare division shall have the right to make agreements for the payment of compensation for keeping children in family foster homes subject to the approval of the state department.

(f) Make provisions for extending and improving services for locating crippled children and providing medical, surgical, corrective and other services and facilities for diagnosis, hospitalization and after care for children who are crippled or who are suffering from conditions which lead to crippling.

(g) Enforce all laws pertaining to children and take the initiative in all matters involving the interest of illegitimate, dependent, neglected and delinquent children where adequate provision therefor has not been made by law; and to use funds available for cases where special medical or material assistance is necessary to rehabilitate subnormal or physically handicapped children and where it is not otherwise provided for by law; and cooperate for the purposes hereof with all reputable child helping and child placing agencies.

(h) License and inspect infants' homes, maternity homes, and child placing agencies.

(i) Supervise the importation and exportation of children.

(j) Accept the guardianship or custody of children committed by the courts to the state department and arrange for their care in family foster homes or otherwise in cooperation with county departments of public welfare.

(k) Nothing in this act shall be construed as authorizing any state or county official, agent or representative, in carrying out any of the provisions of this act, to take charge of any child over the objection of either of the parents of such child, or the person standing in loco parentis to such child, except pursuant to a proper court order.

(L) Assist other departments, agencies and public and private institutions of the state and federal government when so requested, by performing services in conformity with the purposes of this Part [349A.69-349A.73], and particularly such services and duties as may be assigned to it by any state board composed of state officers; provided such services and duties are legally within the duties of such state board. [L. '39, Ch. 82, §§ 19, 20, approved and in effect March 9, 1939, amending L. '37, Ch. 82, Part VI, § IV, approved March 4, 1937.]

Note. See note under section 349A.3, as to the constitutionality of a law amending part of a section without reprinting the entire section at large.

349A.73. Duties of county board—local administration—services in county. The county board of public welfare shall supervise the local administration of child welfare services under the powers and duties set forth in Part I [349A.1-349A.21], and subject to the rules and regulations of the state department.

Regular staff workers of the county department will handle the work of child welfare services in the county. Where such personnel are not qualified to handle the work of child welfare services, the state department will

arrange for the services of such special child welfare workers as are necessary. [L. '37, Ch. 82, Part VI, § V. Approved March 4, 1937.]

PART VII

Providing the Saving Clause, the Repeal of Conflicting Sections and the Effective Date.

349A.74. Short title. This act may be cited as the "Public Welfare Act." [L. '37, Ch. 82, Part VII, § I. Approved March 4, 1937.]

349A.75. Repeals. That sections 325 to 335 inclusive 335.1 - 335.2 - 335.3 - 335.4 - 335.5 - 335.6 - 335.7 - 335.8 - 335.9 - 335.10 - 335.11 - 335.12 - 335.13 - 335.14 - 335.15 - 335.16 - 335.17 - 335.18 - 335.19 - 335.20 - 335.21 - 335.22 - 335.23 - 335.24 - 335.25 - 335.26 - 335.27 - 335.28 - 335.29 - 335.30 - 335.31 - 335.32 - 335.33 - 335.34 - 335.35 - 335.36 - 335.37 - 335.38 - 335.39 - 335.40 - 335.41 - 335.42 - 335.43 - 335.44 - 335.45 - 10480 - 10481 - 10482 - 10483 - 10484 - 10485 - 10486 - 10487 of the revised codes of Montana 1935 be, and the same are hereby repealed. [L. '37, Ch. 82, Part VII, § II. Approved March 4, 1937.]

349A.76. Repeals. That sections 2511 - 2512 - 2513 - 2514 - 336 - 337 - 338 - 339 - 340 - 341 - 342 - 343 - 344 - 345 - 346 - 347 of the revised codes of Montana 1935 be, and the same are hereby repealed, such repeal to be in full force and effect from and after the first day of July, 1937. [L. '37, Ch. 82, Part VII, § III. Approved March 4, 1937.]

349A.77. Validity—partial invalidity saving clause. The legislature hereby declares that it would have passed this act and each and every Part, section, sub-section, sentence, clause and phrase thereof, irrespective of the fact that any one or more of the Parts, sections, sub-sections, sentences, clauses or phrases thereof may be declared unconstitutional, or in violation of the constitution of the state of Montana or in conflict with the federal social security act or any rules, regulations supplementary or amendatory thereof. [L. '37, Ch. 82, Part VII, § IV. Approved March 4, 1937.]

349A.78. Effective date of act. That this act shall be in full force and effect from and after its passage and approval, except so much thereof as may hereinbefore be designated to be in effect from and after the first day of July, 1937 and which said Parts shall be in full force and effect from and after the first day of July, 1937. [L. '37, Ch. 82, Part VII, § V. Approved March 4, 1937.]

PART VIII

Appropriations, Disposition of Funds and Disbursements.

349A.79. Receipt of funds—state treasurer as fiscal officer. The treasurer of the state of Montana is hereby designated as the appropriate fiscal officer of the state to receive federal funds. All money appropriated by the legislature for public welfare purposes, all money received from the United States government for public welfare purposes, and all money received from any other source for the purposes set forth in the public welfare act shall be paid into the state treasury and constitute a special fund to be designated as the public welfare fund. [L. '37, Ch. 82, Part VIII, § I. Approved March 4, 1937.]

1938. "It appears to be clear from a reading of chapter 82 (Laws of 1937, section 349A.1 et seq.), standing alone, that no further appropriation was contemplated for carrying into effect the purposes of the act, aside from the provisions of part 8 (§§ 349A.79 to 349A.83)." State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

349A.80. Source of state appropriation. For carrying out the duties and obligations of the state department, for the performance of welfare services of the state, and for matching such federal funds as may be available for the aforesaid welfare services, the legislature shall make appropriation put (?) out of the general fund of the state for the various and separate activities of the state department and county departments of public welfare. [L. '37, Ch. 82, Part VIII, § II. Approved March 4, 1937.]

1938. This section demonstrates "that the funds to be provided for the performance of all the duties and obligations of the state department of public welfare are provided by specific appropriations of the legislature." State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

1938. The appropriation for carrying on the work of the public welfare act was made by section 349A.80 and not by section 2815.192. State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

349A.81. Method of Disbursement—imprest fund — claims against — bank accounts — how safeguarded—replacement of fund—appropriations. The state department of public welfare shall disburse all public assistance grants and costs of administration as provided for in each part of this act and all other expenditures authorized to be made by the department. The funds appropriated shall be made available for such disbursements in the following manner:

From the appropriations made, the state department of public welfare shall as soon as it finds that it needs the money, be provided with an imprest fund for each quarter of each fiscal year ordinarily not exceeding one-fourth of the appropriation made for the fiscal year; provided, however, that for good cause shown a larger portion than one-fourth of the

appropriation for the fiscal year may be included in the imprest fund for any quarter. Any unexpended balance of the imprest fund made available for one quarter and remaining unexpended at the end of such quarter shall remain available for the use of the department for the succeeding quarter. The state department shall be responsible and liable to the state for all funds so received, and the department may divide the funds received among such specific accounts as it may deem necessary or desirable to establish.

In order to obtain money for the imprest fund, the department shall present claims to the state board of examiners; upon being approved by the state board of examiners and presented to the state auditor, the state auditor shall issue his warrant or warrants, and upon the receipt of such warrant or warrants the state treasurer shall disburse the amounts allowed to the state department of public welfare.

The state department shall establish and maintain a bank account or accounts properly safeguarded by the deposit of such securities as may be used by depositories as security for funds under the control of the state treasurer, and these securities shall be subject to the approval of the state examiner and the state board of public welfare. This account or accounts shall be subject to checks or orders drawn by the state department for the payment of assistance grants, the cost of administration of the state and county departments and for all other expenditures authorized to be made by the department.

The appropriations made for the period beginning with March 2, 1939, and terminating with June 30, 1939, shall be made available through the method above indicated as rapidly as the state department finds that the funds are needed.

When any of the said funds are deposited in any bank or banks pursuant to the foregoing provisions and securities have been deposited to safeguard these deposits as above required, and the securities have been approved by the state examiner and by the state board of public welfare, the state department of public welfare and all its officers and employees shall be released from any liability to the state for any loss that might occur through the failure of the bank to repay such funds so deposited or any part thereof up to the full amount of the securities deposited. [L. '39, Ch. 129, § 21, approved and in effect March 9, 1939, amending L. '37, Ch. 82, Part VIII, § III, approved and in effect March 4, 1937.

349A.82. Transfer of funds from specific accounts. Any money appropriated or earmarked for any specific account or purpose not needed for such account or purpose may be transferred by the state board of public welfare to any other account or purpose under the authority of the state department of public welfare. This transfer shall be effective and be deemed completed when the state board of public welfare has entered an order for such transfer upon its minutes and the state auditor has been notified of the action taken. [L. '39, Ch. 129, § 22, approved and in effect March 9, 1939, amending L. '37, Ch. 82, Part VIII, § V, approved and in effect March 4, 1937.

Section 23 of the act of laws of 1939 repealed conflicting laws.

Note. As L. '37, Ch. 82, Pt. VIII, § IV, was wholly an appropriation section, and thus obsolete, the succeeding section V was renumbered section IV, thus taking the place of the above section 349A.82, in L. '39, Ch. 129, § 22.

349A.82(d) (6). Appropriations.

1938. The state can disburse funds for general relief, medical aid, and hospitalization to needy ward Indians from the appropriation made by § 349A.82 (d)(6). State ex rel. Williams v. Kemp, 106 Mont. 444, 78 P. (2d) 585.

CHAPTER 34B

RURAL REHABILITATION

Section

- 349B.1. Rural rehabilitation projects—resettlement purposes—payment by United States—agreements—state board of equalization—authorization—definitions.
- 349B.2. Services by state for benefit of projects—payment by United States—agreements by board—authorization.
- 349B.3. Payments in lieu of taxes—basis for determination.
- 349B.4. Agreements—filing with secretary of state—duties of secretary.
- 349B.5. Payments—disposition.
- 349B.6. Rural rehabilitation projects—resettlement purposes—payment by United States—agreements—county commissioners—authorization—definitions.
- 349B.7. Services by counties for benefit of projects—payment by United States—agreements by commissioners—authorization.
- 349B.8. Payments in lieu of taxes—basis for determination.
- 349B.9. Agreements—contents—statement of share of each county or political subdivision.
- 349B.10. Agreements—filing of copies—duty of boards—duties of county clerks and treasurers.
- 349B.11. Government project fund—apportionment among political subdivisions.
- 349B.12. Treasurer's statement—filing of copies—warrants for payments to political subdivisions—endorsement—payment—refusal to receive—effect.

Section

- 349B.13. Agreements by political subdivision direct with United States—when authorized to make—direct payment—basis of determination—receipts.
- 349B.14. Funds in which payments to be deposited.
- 349B.15. Absence of agreement—duty of subdivision to furnish services for project.

349B.1. Rural rehabilitation projects — resettlement purposes — payment by United States — agreements — state board of equalization — authorization — definitions. That the following definitions shall be applied to the terms used in this act:

(1) "Agreement" shall mean "contract", and shall include renewals and alterations of a contract.

(2) "Board" shall mean the state board of equalization of the state of Montana.

(3) "State" shall mean the state of Montana.

(4) "Services" shall mean such public and state functions as are performed for property in and persons residing within this state.

(5) "United States" shall mean the United States of America.

(6) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States, located within this state, and shall include persons inhabiting such project. [L. '39, Ch. 58, § 1. Approved and in effect February 24, 1939.]

349B.2. Services by state for benefit of projects — payment by United States — agreements by board — authorization. The board is hereby authorized and empowered to make requests of the United States, for and on behalf of this state, for payment of such sums in lieu of taxes as the United States may agree to pay, and to consummate agreements with the United States, in the name of this state, for the performance of services by the state for the benefit of projects, and for the payment by the United States to the state, in one or more installments, of such sums in lieu of taxes. [L. '39, Ch. 58, § 2. Approved and in effect February 24, 1939.]

349B.3. Payments in lieu of taxes — basis for determination. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to the state of performing services for the benefit of the projects during the period of agreement, after taking into consideration the benefits to be derived by the state from such projects, but shall not be in excess of the taxes which would result to the state for the said period if the real property of the projects within the state were

taxable. [L. '39, Ch. 58, § 3. Approved and in effect February 24, 1939.]

349B.4. Agreements — filing with secretary of state — duties of secretary. A duplicate copy of every agreement for payment of sums in lieu of taxes shall be filed in the office of the treasurer of this state. On or before the date on which any payment of sums in lieu of taxes is due, the state treasurer shall present a bill to the United States, in the name of the state, in the amount of such payment. The state treasurer shall give to the United States a receipt in the name of the state for all payments of sums in lieu of taxes. [L. '39, Ch. 58, § 4. Approved and in effect February 24, 1939.]

349B.5. Payments — disposition. All payments of sums in lieu of taxes received by this state shall be deposited in the general fund, and shall become subject to appropriation as a part thereof. [L. '39, Ch. 58, § 5. Approved and in effect February 24, 1939.]

349B.6. Rural rehabilitation projects — resettlement purposes — payment by United States — agreements — county commissioners — authorization — definitions. That the following definitions shall be applied to the terms used in this act:

(1) "Agreement" shall mean "contract", and shall include renewals and alterations of a contract.

(2) "Board" shall mean the board of county commissioners of any county in this state.

(3) "Political subdivision" shall mean any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied.

(4) "Services" shall mean such public and municipal functions as are performed for property in and persons residing within a political subdivision.

(5) "United States" shall mean the United States of America.

(6) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States located within a political subdivision, and shall include the persons inhabiting such project.

(7) "Governing body" shall mean the commission, board, body, or persons in which the powers of a subdivision as a body corporate, or otherwise, are vested.

(8) "Fund" shall mean, unless otherwise expressed, the "government project fund" to be established pursuant to section 6 of this act [349B.11]. [L. '39, Ch. 59, § 1. Approved and in effect February 24, 1939.]

349B.7. Services by counties for benefit of projects — payment by United States — agreements by commissioners — authorization. The board of county commissioners of any county in this state is hereby authorized and empowered to make requests of the United States, for and on behalf of the county and the political subdivisions whose jurisdictional limits are within or coextensive with the limits of the county, for payment of such sums in lieu of taxes as the United States may agree to pay, and to enter into agreements with the United States, in the name of the county, for the performance of services by the county and such political subdivisions for the benefit of the project, and for the payment by the United States to the county, in one or more installments, of such sums in lieu of taxes. [L. '39, Ch. 59, § 2. Approved and in effect February 24, 1939.

349B.8. Payments in lieu of taxes — basis for determination. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to each political subdivision, for and on whose behalf the agreement is entered into, of performing services for the benefit of a project during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from such project, but shall not be in excess of the taxes which would result to the subdivision for the said period if the real property of the project within the subdivision were taxable. [L. '39, Ch. 59, § 3. Approved and in effect February 24, 1939.

349B.9. Agreements — contents — statement of share of each county or political subdivision. Each agreement entered into pursuant to section 2 [349B.7] shall contain the names of the political subdivisions with respect to which it is consummated, and a statement of the proportionate share of the payment by the United States to which each such subdivision shall be entitled. [L. '39, Ch. 59, § 4. Approved and in effect February 24, 1939.

349B.10. Agreements — filing of copies — duty of boards — duties of county clerks and treasurers. The board shall file duplicate copies of every agreement for payment of sums in lieu of taxes with the county clerk and county treasurer. Upon receipt of the same, the county clerk shall notify each political subdivision for and on whose behalf the agreement is executed that the same has been consummated, and state the share of the payment due thereunder to which the subdivision is entitled. On or before the date on which any payment of sums in lieu of taxes is due, the county treasurer shall present a bill to the United States, in the name of the

county, in the amount of such payment. The county treasurer shall give to the United States a receipt in the name of the county for all payments of sums in lieu of taxes. [L. '39, Ch. 59, § 5. Approved and in effect February 24, 1939.

349B.11. Government project fund—apportionment among political subdivisions. The county treasurer shall establish a fund in the county treasury to be known as the "government project fund". The fund shall contain an account with each political subdivision which is entitled to a share of a payment of sums in lieu of taxes. Whenever such payment is received, the county treasurer shall apportion it to the several accounts in the fund pursuant to the agreement under which the payment is made. [L. '39, Ch. 59, § 6. Approved and in effect February 24, 1939.

349B.12. Treasurer's statement — filing of copies — warrants for payments to political subdivisions — endorsement — payment — refusal to receive — effect. After apportioning any payment to the several accounts as provided in section 6 [349B.11], the county treasurer shall prepare in duplicate a complete itemized statement, one copy of which shall be filed with the board of county commissioners, and the other of which shall be filed with the county clerk. The board of county commissioners shall, by appropriate resolution, order warrants drawn on the county treasurer to the order of each political subdivision named in the itemized statement, in the amount of the political subdivision's share in the payment. The county clerk shall draw and sign said warrants, which shall also be signed by the chairman of the board of county commissioners. Whenever such warrant is presented to the county treasurer, he shall debit the proper account in the fund, and shall pay the amount of such warrant in full, without deduction, to the political subdivision presenting the same; provided, however, that the county treasurer shall not honor such warrant unless it is endorsed by the president, chairman, or other presiding officer of the governing body of such political subdivision. The endorsement of any warrant by said presiding officer of the governing body of a political subdivision as provided in this section shall be construed as an approval of the agreement under which the payment was received. If any governing body of a political subdivision shall refuse to receive any warrant delivered pursuant to this section, the amount of the warrant shall be refunded to the United States by the county. [L. '39, Ch. 59, § 7. Approved and in effect February 24, 1939.

349B.13. Agreements by political subdivision direct with United States—when authorized to make—direct payment—basis of determination—receipts. If the United States declines to deal with a board with respect to any political subdivision whose jurisdictional limits are within or coextensive with the limits of the county, or in the event the jurisdictional limits of a political subdivision lie in more than one county, that subdivision is hereby authorized to make request of the United States for payments of such sums in lieu of taxes as the United States may agree to pay, and is hereby empowered to enter into agreements with the United States for the performance by the subdivision of services for the benefit of a project, and for the payment by the United States to the subdivision, in one or more installments, of such sums in lieu of taxes. The amount of such payment may be based upon the cost of performing such services during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from the project, but shall not be in excess of the taxes which would result to the political subdivision for the period if the real property of the project within the political subdivision were taxable. Whenever any payment is received by a subdivision under an agreement entered into pursuant to this section, the governing body of such subdivision shall issue a receipt for such payment. [L. '39, Ch. 59, § 8. Approved and in effect February 24, 1939.]

349B.14. Funds in which payments to be deposited. All money received by a political subdivision pursuant to section 7 [349B.12] or under section 8 [349B.13] shall be deposited in such fund or funds, or items of a fund or funds, as may be designated in the agreement; provided, however, that if the agreement does not make such designation, the money received shall be deposited in such fund or funds, or items of a fund or funds, as the governing body of such subdivision shall by appropriate resolution direct. [L. '39, Ch. 59, § 9. Approved and in effect February 24, 1939.]

349B.15. Absence of agreement—duty of subdivision to furnish services for project. No provision of this act shall be construed to relieve any political subdivision of this state, in the absence of an agreement for payment of sums in lieu of taxes by the United States as provided in this act, of the duty of furnishing, for the benefit of a project, all services which the subdivision usually furnishes for property in and persons residing within the subdivision without a payment of sums in lieu of taxes. [L. '39, Ch. 59, § 10. Approved and in effect February 24, 1939.]

CHAPTER 35

STATE WATER CONSERVATION BOARD

Section

- 349.29-1. Sidney pumping project—public works administration—cooperation with federal government—authorization.
- 349.29-2. Yellowstone river—appropriation and diversion of waters—authorization.
- 349.38-1. Water conservation lands—exemption from taxation—unpaid taxes—cancellation—certificate of tax sale issued.

349.5. Power of board to construct works and act beyond jurisdiction.

Note. See § 349.29-2, Sidney pumping project.

349.6. Water conservation revenue bonds.

1938. This section was not violated by the water conservation board by the issuance of revenue bonds to take up relief emergency warrants issued by a county to raise funds for the construction of a reservoir to store and furnish water for the irrigation of lands of stockholders of a water users' association where the bonds were secured solely by such waterworks and revenue derived from the operation thereof. *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

1938. Cited in *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864, stating that by this section the water conservation board has express authority to issue revenue bonds to be retired by funds obtained from water users.

349.8. Trust indenture, resolution and covenants of board.

1938. This section was not violated by the water conservation board by the issuance of revenue bonds to take up relief emergency warrants issued by a county to raise funds for the construction of a reservoir to store and furnish water for the irrigation of lands of stockholders of a water users' association where the bonds were secured solely by such waterworks and revenue derived from the operation thereof. *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

349.24. Sale or disposal of waters—disposal of waterworks systems, provision for.

1935. City may contract with the water conservation board for a supply of water though the contract would run for 30 years, since any legal body, such as the city council of a municipality, is a continuing body, and the members thereof act as a board and not as individuals. *Farmers State Bank of Conrad v. City of Conrad*, 100 Mont. 415, 57 P. (2d) 853.

1935. The powers granted a city by the legislature to contract for and procure a water supply are plenary and unlimited save by the duty to exercise them with reasonable discretion. *Farmers State Bank of Conrad v. City of Conrad*, 100 Mont. 415, 47 P. (2d) 853.

1935. This section is not violated where special fund dedicated to payment of indebtedness is alone liable therefor, such as revenue from plan to buy water from water conservation board, or where property is purchased for improvement of existing plant and revenue from entire plant is set aside for payment

of purchase price of improvement. *Farmers State Bank of Conrad v. City of Conrad*, 100 Mont. 415, 47 P. (2d) 853.

1935. A city may contract with the water conservation board for a water supply where the net revenue from so doing would be greater than that from operating its own existing system; "revenue," as used in article 3, section 6 of the constitution meaning "net revenue." *Farmers State Bank of Conrad v. City of Conrad*, 100 Mont. 415, 47 P. (2d) 853, holding, also, that a bond holder who bought bonds for the construction of the city water system could not enjoin the city from entering into such contract, since the city's net revenue would be increased thereby.

349.29-1. Sidney pumping project — public works administration — cooperation with federal government — authorization. The state water conservation board of the state of Montana is hereby authorized and empowered to construct and operate a certain irrigation project in the vicinity of Sidney, Montana, an application for which project has been presented by the state water conservation board to the federal emergency administration of public works and is known and designated in such federal emergency administration of public works as the "Sidney pumping project", P.W.A. docket Montana No. 1114-R, and to make all necessary arrangements and contracts with the federal emergency administration of public works for the financing, construction and operation of said project. [L. '37, Ch. 155, § 1. Approved and in effect March 16, 1937.

349.29-2. Yellowstone river — appropriation and diversion of waters — authorization. The said state water conservation board is further authorized and empowered to appropriate and divert waters from the Yellowstone River for the construction of said project and to convey, permit and supervise the use of said waters in the state of North Dakota as well as the state of Montana, and to exercise all powers herein given to said board in connection with said project to the same extent and in the same manner as if the said project was located wholly within the state of Montana. [L. '37, Ch. 155, § 2. Approved and in effect March 16, 1937.

349.37. State agencies and boards and counties authorized to contract with water conservation board.

1935. The powers granted a city by the legislature to contract for and procure a water supply are plenary and unlimited save by the duty to exercise them with reasonable discretion. *Farmers State Bank of Conrad v. City of Conrad*, 100 Mont. 415, 47 P. (2d) 853.

1935. A city may contract with the water conservation board for a water supply where the net revenue from so doing would be greater than that from operating its own existing system; "revenue," as used in article 3, section 6 of the constitution

meaning "net revenue." *Farmers State Bank of Conrad v. City of Conrad*, 100 Mont. 415, 47 P. (2d) 853, holding, also, that a bond holder who bought bonds for the construction of the city water system could not enjoin the city from entering into such contract, since the city's net revenue would be increased thereby.

1935. This section is not violated where special fund dedicated to payment of indebtedness is alone liable therefor, such as revenue from plan to buy water from water conservation board, or where property is purchased for improvement of existing plant and revenue from entire plant is set aside for payment of purchase price of improvement. *Farmers State Bank of Conrad v. City of Conrad*, 100 Mont. 415, 47 P. (2d) 853.

1935. City may contract with the water conservation board for a supply of water though the contract would run for 30 years, since any legal body, such as the city council of a municipality, is a continuing body, and the members thereof act as a board and not as individuals. *Farmers State Bank of Conrad v. City of Conrad*, 100 Mont. 415, 57 P. (2d) 853.

349.38-1. Water conservation lands — exemption from taxation — unpaid taxes — cancellation — certificate of tax sale issued. All lands acquired and held by the state water conservation board or the state of Montana for use in connection with water conservation projects, constructed or to be constructed under the laws of this state, shall be exempt from taxation and it shall be the duty of the county treasurer to cancel all taxes remaining unpaid against said land for the year in which same is so acquired and for all previous years, provided, that such taxes shall be cancelled only in such cases as no tax certificates shall have issued or a tax certificate has issued to the county and no assignment of such certificate of sale has been made by said county prior to the time when said land was acquired by said state water conservation board. [L. '37, Ch. 114, § 1. Approved and in effect March 15, 1937.

Section 2 repeals conflicting laws.

CHAPTER 42

THE MARSHAL OF THE SUPREME COURT

Section

366. Marshal of the supreme court—appointment—term.

367. Duties of marshal—to act as law clerk.

368. Salary and expenses of marshal—mileage.

366. Marshal of the supreme court — appointment — term. The supreme court must appoint a marshal of the supreme court, who holds the office at the pleasure of the court. [L. '39, Ch. 38, § 1, amending R. C. M. 1935, § 366. Approved and in effect February 21, 1939.

Section 6 repeals conflicting laws.

367. Duties of marshal—to act as law clerk. It shall be the duty of the marshal to attend upon the supreme court and the justices thereof at each term of court. He shall be the executive officer of the court, and act as crier thereof. He must serve within the state all returns and processes issuing from the supreme court and shall have all the powers and exercise all the duties pertaining to sheriffs as to the district courts so far as the same are applicable. He shall act as a law clerk for the supreme court justices. [L. '39, Ch. 38, § 2, amending R. C. M. 1935, § 367. Approved and in effect February 21, 1939.]

Section 6 repeals conflicting laws.

368. Salary and expenses of marshal—mileage. The annual salary of the marshal of the supreme court for all services now required of him shall be fixed, at that figure the supreme court shall deem reasonable, provided that the salary per annum shall not exceed twenty-four hundred dollars (\$2400.00), by the supreme court of the state of Montana. When serving process of court beyond the place where the court is held, in cases in which the state, a county, or any subdivision thereof, or any officer when prosecuting or defending an action on behalf of the state, county, or subdivision thereof, is not a party, the marshal is entitled to receive the same mileage as provided by law for sheriffs in performing similar services, to be taxed as costs, as in other cases; in cases in which the state, a county, or any subdivision thereof, or any officer when prosecuting or defending an action on behalf of the state, a county, or any subdivision thereof, is the real party in interest, he shall be entitled to receive his actual expenses incurred in serving such process, to be paid from the fund appropriated for expenses of the supreme court not otherwise provided for. [L. '39, Ch. 38, § 3, amending R. C. M. 1935, § 368. Approved and in effect February 21, 1939.]

Section 6 repeals conflicting laws.

CHAPTER 43

THE CLERK OF THE SUPREME COURT

Section

372. Fees.

377. Court attendant—appointment—term—duties—salary.

372. Fees. He must collect in advance the following fees: For filing the transcript on appeal, in each civil case appealed to the supreme court, ten dollars payable by the appellant, and five dollars payable by respondent, at the time of his appearance, in full for all services rendered in each case, up

to the remittitur to the court below; for filing petition for any writ, ten dollars, in full for all services rendered in each cause; for certificate of admission as attorney and counselor, five dollars; for making transcripts, copies of papers or record, fifteen cents per folio; for comparing any document requiring a certificate, five cents per folio; for each certificate under seal, one dollar.

All fees collected by him must be paid into the state treasury, fifty per cent thereof to the credit of the general fund, and fifty per cent thereof to the credit of the state law library fund. [L. '39, Ch. 156, § 1, amending R. C. M. 1935, § 372. Approved and in effect March 11, 1939.]

Section 3 repeals conflicting laws.

377. Court attendant—appointment—term—duties—salary. The supreme court must appoint a court attendant, who shall hold office at the pleasure of the court, and who shall act as law clerk to the supreme court justices, and perform any and other duties prescribed by the supreme court. Whenever the clerk of the supreme court is incapacitated or absent, the attendant of the supreme court is hereby authorized to perform all the functions and duties of said clerk. Salary for all the duties now required of the court attendant shall be fixed at that figure the supreme court shall deem reasonable and just, provided that the salary per annum shall not exceed twenty-four hundred dollars (\$2400.00). [L. '39, Ch. 38, § 4, amending R. C. M. 1935, § 377. Approved and in effect February 21, 1939.]

Section 6 repeals conflicting laws.

CHAPTER 44

THE REPORTERS OF THE DECISIONS OF THE SUPREME COURT

Section

384. Distribution of reports.

378. Justices of supreme court to report decisions.

1936. ✓ Offers made and statements published by candidates for a public office that they will, if elected, serve at less salaries or for less fees than those fixed by law, are in violation of the corrupt practices act and constitute bribery under the common law. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662, holding petition in election contest stated a cause of action.

1936. ✓ Section 378 was not repealed by section 8796 or any other statute. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

1936. Section 378 does not violate Const. Art. 8, § 30. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

1936. ✓ A candidate for office of chief justice of supreme court stating in good faith to voters that he believed section 378 unconstitutional and that, if

elected to the office, would not accept compensation for reporting cases, did not violate corrupt practices act. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662. 1936. ✓ Section 378 does not violate Const. Art. 8, § 35. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662. 1936. ✓ The office of supreme court reporter is not an office within the meaning of Const. Art. 8, § 35, in that it does not possess a delegation of a portion of the sovereign power of the government to be exercised for the benefit of the public. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

381. Contract with publisher.

1937. ✓ Sections 283.1 and 381, being on a parity, must be construed, if possible, so that both may stand. *State ex rel. Helena Allied Printing Council v. Mitchell*, 105 Mont. 326, 74 P. (2d) 417.

1937. ✓ A publisher, by reason of merely bidding on one part of a proposal to publish the supreme court reports, did not submit what constituted a bid. *State ex rel. Helena Allied Printing Council v. Mitchell*, 105 Mont. 326, 74 P. (2d) 417.

1937. ✓ In awarding contracts for the printing of the supreme court decisions the members of the supreme court act, not as a court, but as a board of awards, and in that capacity are subject to all of the provisions of the statutes relating to public boards of like nature. *State ex rel. Helena Allied Printing Council v. Mitchell*, 105 Mont. 326, 74 P. (2d) 417.

1937. ✓ A taxpayer able to show substantial injury because of improper award of contract for printing supreme court reports would have right to be heard on that issue as relator in proceeding by state against secretary of state. *State ex rel. Helena Allied Printing Council v. Mitchell*, 105 Mont. 326, 74 P. (2d) 417.

1937. ✓ Section 381 is not invalid as a special act by requiring a bidder to furnish back numbers of the Montana reports, since anyone can do so, although one publisher was better equipped to furnish them because it had the matrices used in printing such reports. *State ex rel. Helena Allied Printing Council v. Mitchell*, 105 Mont. 326, 74 P. (2d) 417.

1931. ✓ Section 283.1 did not repeal section 381. *State ex rel. Helena Allied Printing Council v. Mitchell*, 105 Mont. 326, 74 P. (2d) 417.

1937. ✓ There is nothing in Const. Art. 5, § 30, which requires contracts for the printing of the supreme court reports to be submitted for approval of the governor and treasurer, since the word "laws," as used in that section, mean session laws and not such decisions. *State ex rel. Helena Allied Printing Council v. Mitchell*, 105 Mont. 326, 74 P. (2d) 417.

384. Distribution of reports. On the publication of each volume of said reports the secretary of state shall purchase of said publisher, for the use of the state, three hundred copies thereof, and shall distribute the same in the manner following: To the law libraries of each state and territory of the United States, one copy; to the library of congress, five copies; to each of the judges of the United States district courts of the states of Idaho, Nevada, California, Washington, Montana, Wyoming, and Oregon, one copy; to each state officer, justice of the supreme court, district judge, county attorney and clerk of the district court in this state, one copy; to

the law library of the state of Montana, three copies. He shall also distribute said reports to literary and scientific institutions, publishers and authors and legislative reference libraries of other states with whom the state law librarian has established or may hereafter establish a system of exchange. He shall also distribute to the university of Montana not to exceed fifty copies to be used by the law librarian of the state university for the purpose of exchanges with universities and institutions of higher education in other states. All reports distributed to state, district, and other officers in the state shall be for the use of their office, and shall be, by the person receiving the same, turned over to his successor in office, and the secretary of state shall take proper receipts for such reports. [L. '37, Ch. 46, § 3, amending R. C. M. 1935, § 384. Approved and in effect February 23, 1937.

Section 5 repeals conflicting laws.

CHAPTER 51

COMPENSATION OF STATE OFFICERS AND EMPLOYEES

Section

442.1. Officers paid quarterly—salary advancements—duty of disbursing officers.

442.1. Officers paid quarterly—salary advancements—duty of disbursing officers. In any case where a public officer of this state is paid his salary quarterly under and by virtue of a provision of the constitution of the state of Montana, upon demand of any such officer, the state auditor of the state of Montana, or other disbursing officer, is authorized and directed to advance out of salary account such sum of money to such official, and to deduct same from his salary, as is equivalent to the salary that he would be entitled to receive if he were paid his salary monthly; provided that such advancement on account of salary earned shall not be made more often than once each month. [L. '39, Ch. 9, § 1. Approved and in effect February 7, 1939.

CHAPTER 52

PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS

455. Records open to public inspection—exceptions.

1937. Under section 4810 and other statutory and constitutional provisions, an elector may inspect petitions for a referendum in the possession of the

recorder and county clerk, whether or not they be regarded as public records. State ex rel. Halloran v. McGrath, 104 Mont. 490, 67 P. (2d) 838.

1937. ✓The right of inspection of public records by the public is subject to reasonable regulation, but such regulations must not be of such an arbitrary nature as to deny to the applicant the right granted him by law. State ex rel. Halloran v. McGrath, 104 Mont. 490, 67 P. (2d) 838.

CHAPTER 53

OFFICIAL BONDS

Section

464. Bonds of state officers.

466. Bonds of county officers.

464. Bonds of state officers. The following named state officers shall give official bonds, conditioned as provided by law, in the following amounts, to-wit:

Adjutant general, one thousand dollars.

Chief grain inspector, one thousand dollars.

Attorney general, twenty-five thousand dollars.

State auditor, ten thousand dollars.

Deputy state auditor, two thousand dollars.

Deputy insurance commissioner of state auditor, two thousand dollars.

State fire marshal, one thousand dollars.

Bank examiner, ten thousand dollars.

Assistant superintendent of banks, one thousand dollars.

Secretary of state board of health, one thousand dollars.

Clerk of supreme court, three thousand dollars.

State forester, two thousand dollars.

Game warden, two thousand dollars.

Chief engineer of highway commission, three thousand dollars.

Principal assistant of highway commission, three thousand dollars.

Chairman industrial accident board, five thousand dollars.

Chief accountant industrial accident board, two thousand dollars.

Registrar of state land office, twenty-five thousand dollars.

Assistant registrar of state land office, five thousand dollars.

Deputy registrar of state lands, five thousand dollars.

Secretary and chief clerk livestock commission, ten thousand dollars.

Six market inspectors each, of the livestock commission, two thousand dollars.

Twelve inspectors each, of the livestock commission, one thousand dollars.

Railroad commissioners each, five thousand dollars.

Secretary of railroad commission, one thousand dollars.

Superintendent public instruction, three thousand dollars.

Secretary of state, ten thousand dollars.

Deputy secretary of state, two thousand dollars.

Chief clerk secretary of state, one thousand dollars.

All other clerks each, of secretary of state, one thousand dollars.

State veterinarian, one thousand dollars.

State treasurer, two hundred thousand dollars.

Deputy state treasurer, twenty-five thousand dollars.

Chief clerk of the state treasurer, twenty-five thousand dollars.

Assistant chief clerk of state treasurer, ten thousand dollars.

Bond clerk of state treasurer, five thousand dollars.

Income tax auditor, two thousand dollars.

[L. '37, Ch. 161, § 1, amending R. C. M. 1935, § 464. Approved and in effect March 16, 1937.

Section 2 repeals conflicting laws.

466. Bonds of county officers. The following named county officers shall give official bonds conditioned as provided by law in the following amounts, to-wit:

Sheriffs in counties of the first and second class, fifteen thousand dollars (\$15,000.00).

Sheriffs in counties of the third class, ten thousand dollars (\$10,000.00).

Sheriffs in counties of the fourth class, eight thousand dollars (\$8,000.00).

Sheriffs in counties of the fifth and sixth class, seven thousand dollars (\$7,000.00).

Sheriffs in counties of the seventh class, six thousand dollars (\$6,000.00).

County clerks in counties of the first and second class, ten thousand dollars (\$10,000.00).

County clerks in counties of the third and fourth class, eight thousand dollars (\$8,000.00).

County clerks in counties of the fifth class, seven thousand dollars (\$7,000.00).

County clerks in counties of the sixth and seventh class, five thousand dollars (\$5,000.00).

County assessors in counties of the first and second class, ten thousand dollars (\$10,000.00).

County assessors in counties of the third class, seven thousand dollars (\$7,000.00).

County assessors in counties of the fourth and fifth class, five thousand dollars (\$5,000.00).

County assessors in counties of the sixth class, four thousand dollars (\$4,000.00).

County assessors in counties of the seventh class, four thousand dollars (\$4,000.00).

Clerks of the district court in counties of the first, second and third class, ten thousand dollars (\$10,000.00).

Clerks of the district court in counties of the fourth class, eight thousand dollars (\$8,000.00).

Clerks of the district court in counties of the fifth class, seven thousand dollars (\$7,000.00).

Clerks of the district court in counties of the sixth and seventh class, five thousand dollars (\$5,000.00).

County auditors in counties of the first and second class, ten thousand dollars (\$10,000.00).

County auditors in counties of the third and fourth class, eight thousand dollars (\$8,000.00).

County treasurers in counties of the first, second and third class, one hundred thousand dollars (\$100,000.00).

County treasurers in counties of the fourth class, eighty thousand dollars (\$80,000.00).

County treasurers in counties of the fifth class, seventy-five thousand dollars (\$75,000.00).

County treasurers in counties of the sixth and seventh class, twenty-five thousand dollars (\$25,000.00).

County attorneys in counties of the first, second and third class, two thousand five hundred dollars (\$2,500.00).

County attorneys in counties of the fourth and fifth class, two thousand dollars (\$2,000.00).

County attorneys in counties of the sixth and seventh class, one thousand dollars (\$1,000.00).

County surveyors in counties of the first, second, third, fourth, fifth, sixth and seventh class, one thousand dollars (\$1,000.00), providing, however, in counties having a total register vote of fifteen thousand (15,000) or over, the bond of the county surveyor shall be in the sum of ten thousand dollars (\$10,000.00).

County superintendents of schools in counties of the first, second, third, fourth, fifth, sixth and seventh class, one thousand dollars (\$1,000.00).

County coroners in counties of the first, second, third and fourth class, five thousand dollars (\$5,000.00).

County coroners in counties of the fifth and sixth class, four thousand dollars (\$4,000.00).

County coroners in counties of the seventh class, two thousand dollars (\$2,000.00).

Public administrators in counties of the first, second and third class, ten thousand dollars (\$10,000.00).

Public administrators in counties of the fourth and fifth class, eight thousand dollars (\$8,000.00).

Public administrators in counties of the sixth and seventh class, one thousand dollars (\$1,000.00), and provided that when real estate is ordered to be sold, or when the value of the personal property of the state in which letters of administration are issued to the public administrator exceeds the amount of his official bond, another bond equal to the probable amount to be realized on the sale of the real estate ordered to be sold, or equal to the probable value of said personal property, must be required by the court.

County commissioners in counties of the first, second, third and fourth class, five thousand dollars (\$5,000.00).

County commissioners in counties of the fifth and sixth class, three thousand dollars (\$3,000.00).

County commissioners in counties of the seventh class, two thousand dollars (\$2,000.00).

Drain commissioners in counties of the first and second class, five thousand dollars (\$5,000.00).

Deputy drain commissioners in counties of the first and second class, one thousand dollars (\$1,000.00).

Special drain commissioners in counties of the first and second class, one thousand dollars (\$1,000.00).

Meat and milk inspectors in counties of the first and second class, one thousand dollars (\$1,000.00).

County librarians in counties of the first and second class, one thousand dollars (\$1,000.00). [L. '39, Ch. 66, § 1, amending R. C. M. 1935, § 466. Approved February 27, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 55

THE FISCAL YEAR—GENERAL REPORTS OF OFFICERS

Section

520. Official reports—publication—permission of board of examiners—discretion—right to demand.

521. Distribution of public reports.

520. Official reports — publication — permission of board of examiners — discretion — right to demand. The head of any state office, board, bureau, commission or department, who under the statutes of the state is required to make an annual or biennial report of his office, board, bureau, commission or department, may make application to the state board of examiners for permission to have such report printed and published, and the said board shall have full power to grant or deny such application.

No report of any state office, board, bureau, commission or department subsequent to the reports for the two year period terminating June 30, 1936, shall be printed and published until the same has been submitted to the state board of examiners and the printing authorized. The said board shall authorize the printing and publication of such reports only when it deems the usefulness of the reports in the administration of the government of the state to justify the expense.

The state board of examiners may in its discretion demand that the annual or biennial report of the head of any office, board, bureau, commission or department shall be printed and published without receiving any request from the officer concerned. [L. '37, Ch. 33, § 1, superseding R. C. M. 1935, § 520. Approved and in effect February 19, 1937.

Section 2 repeals conflicting laws.

521. Distribution of public reports. The reports must be delivered by the secretary of state as follows: To the governor, twenty-five copies of each report; to the librarian of the historical and miscellaneous department of the state library, at least one hundred and fifty copies of each report; to the secretary of state, twenty-five copies of each report; to the library of congress, two copies of each report; to the superintendent of public instruction, two hundred and fifty copies of his report for distribution to school trustees and teachers, and for exchange with other states; to the state board of land commissioners, two hundred copies of their report for distribution to the county surveyors, assessors, county clerks for several counties, and for exchange with other states; to the state auditor, one hundred and fifty copies of his report; to the secretary of state, one hundred copies of his report; to the librarian of the historical and miscellaneous department of the state library, four hundred copies of his report; to the librarian of the law department of the state library, fifty copies of his report; to the officers of the state board of commissioners for the insane, deaf, dumb and blind asylum, fifty copies of their report; to the state board of education, one

hundred copies of their report; and the remaining copies of such reports, one-third to the order of the sergeant-at-arms of the senate, and two-thirds to the order of the sergeant-at-arms of the house, to be by them distributed prorata to the members of the senate and house next to convene. [L. '37, Ch. 46, § 4, amending R. C. M. 1935, § 521. Approved and in effect February 23, 1937.

Section 5 repeals conflicting laws.

CHAPTER 59

QUALIFICATIONS AND PRIVILEGES OF ELECTORS

540. Qualifications of voters.

1937. The phrase "registered vote," in section 1622.1, means voters who were registered and entitled to vote at the last general election, as distinguishable from voters who actually voted thereat. State ex rel. Durland v. Board of County Commissioners, 104 Mont. 21, 64 P. (2d) 1060.

CHAPTER 61

REGISTRATION OF ELECTORS

Section

- 555. Registration — mode — false representations, etc.—penalty.
- 557. Deputy registrars—notaries and justices of peace—appointment of deputy registrars—qualifications—compensation.
- 561. Change of residence to another county—procedure—inquiry by clerk—card file—form of card—forwarding forms to other county—registration cancellation in prior county.
- 562. Voting by absent voters ballot—failure to vote—cancellation of registry—re-registration—procedure.
- 562.1. Application of above section—1936 election—comparison of precinct poll book with registration list.
- 570. Cancellation of registry cards—in what cases—method of cancellation—notice—re-registration.
- 570.1. Registrations — cancellation — card indexes, etc.—disposition—notice—publication.
- 583.1. Violations of act—penalty.

553. County clerk as county registrar.

1937. The phrase "registered vote," in section 1622.1, means voters who were registered and entitled to vote at the last general election, as distinguishable from voters who actually voted thereat. State ex rel. Durland v. Board of County Commissioners, 104 Mont. 21, 64 P. (2d) 1060.

555. Registration — mode — false representations, etc. — penalty. Any elector residing within the county may register by appearing before the county clerk and ex officio registrar and making correct answers to all questions propounded by the county clerk touching the items of information called for

by such registry card, and by signing and verifying the affidavit or affidavits on the back of such card.

If any person shall falsely personate another and procure the person so personated to be registered, or if any person shall represent his name to the county clerk or to the registration clerk or to any other person qualified to register an elector, to be different from what it actually is, and cause such name to be registered, or if any person shall cause any name to be placed upon the registry lists otherwise than in the manner provided in this act, he shall be guilty of a felony, and upon conviction be imprisoned in the state penitentiary for not less than one (1) nor more than three (3) years. [L. '37, Ch. 172, § 4, amending R. C. M. 1935, § 555. Approved and in effect March 18, 1937.

Section 7 repeals conflicting laws.

557. Deputy registrars — notaries and justices of peace — appointment of deputy registrars — qualifications — compensation. All notaries public and justices of the peace are designated as deputy registrars in the county in which they reside, and may register electors residing more than ten miles from the county courthouse in any precinct within the county. The county commissioners shall appoint a deputy registrar, other than notaries public and justices of the peace, for each precinct in the county. Such deputy registrar shall be a qualified, taxpaying resident elector in the precinct for which he is appointed and shall register electors in that precinct, and shall receive as compensation for his services the sum of ten (10) cents for each elector registered by him. Each deputy registrar shall forward by mail, within two (2) days, all registration cards filled out by him to the county clerk and recorder. [L. '37, Ch. 172, § 5, amending R. C. M. 1935, § 557. Approved and in effect March 18, 1937.

Section 7 repeals conflicting laws.

561. Change of residence to another county — procedure — inquiry by clerk — card file — form of card — forwarding forms to other county — registration cancellation in prior county. That in the case of all future registrations, as required by the election laws of the state of Montana, it shall be the duty of the clerk to question each person registering, and ascertain whether or not he has previously registered in the state of Montana. If the person desiring to register has previously registered, the county clerk shall enter his name in a separate file for such purpose, which said file shall be indexed by counties. Cards for such purpose shall be substantially in the following form:

NAME.....
RESIDENCE
(City) (County)
BIRTHPLACE..... AGE.....
PREVIOUS RESIDENCE.....
(City) (County)

In compliance with the election laws of the state of Montana, I am hereby submitting, for your information, the above named elector, who has, on....., 19....., registered as a resident entitled to vote in.....county, in order that his registration may be cancelled from the records in.....county, as provided by the election laws of the state of Montana.

Signature of elector:

.....
Clerk and Recorder and
ex officio registrar

.....
County

Immediately, and not later than three (3) days after the closing of the registration books, the clerk shall forward the above forms to the clerk in the county in which applicant previously voted, either by registered mail or express, and receipt of delivery demanded, said receipt to be kept on file with other election records.

Upon receiving such notice, it will be the duty of the clerk to immediately cancel the registration of the elector in his county, being the county in which said elector previously voted. This must be done by drawing a red line through the elector's name in the register, and also through his name on the registration card. [L. '37, Ch. 172, § 3, amending R. C. M. 1935, § 561. Approved and in effect March 18, 1937.

Section 7 repeals conflicting laws.

562. Voting by absent voters ballot—failure to vote—cancellation of registry—re-registration—procedure. Immediately after every general election, the county clerk of each county shall compare the list of electors who have voted at such election in each precinct, as shown by the official poll-books, with the official register of said precinct, and he shall remove from the official register herein provided for the registry cards of all electors who have failed to vote, or who voted by absent voters ballot, at such election, and shall mark each of said cards with the word "cancelled", and for such electors who voted by absent voters ballot, such electors registry cards shall also be stamped with the words

“voted by absent voters ballot”, and shall place such cancelled cards for the entire county in alphabetical order in a separate drawer to be known as the “cancelled file”; but any elector whose card is thus removed from the official register may re-register in the same manner as his original registration was made, provided, however, that electors whose registry card bears the stamp “voted by absent voters ballot” may re-register only by personally appearing at the office of the county clerk or any deputy registrar for the purpose of re-registering, and the registration card of any elector who thus re-registers shall be filed by the county clerk in the official register in the same manner as original registration cards are filed. The county clerk shall, at the same time, cancel, by drawing a red line through the entry thereof, the name of all such electors who have failed to vote or who voted by absent voters ballot at such election. [L. '37, Ch. 147, § 1, amending R. C. M. 1935, § 562. Approved and in effect March 16, 1937.]

562.1. Application of above section—1936 election—comparison of precinct poll book with registration list. It is the intent of the legislature that section 562 of the revised codes of Montana 1935, as amended by this act shall apply to the list of registered voters who voted, failed to vote, or voted by absent voters ballot at the general election held on the third day of November, 1936. The county clerk of each county shall compare the list of electors who voted at such election in each precinct, as shown by the official poll-book, with the official register of said precinct and he shall remove from the official register herein provided for the registry cards of all electors who have failed to vote at such election or who voted by absent voters ballot at such election, and shall mark the cards of voters who voted by absent voters ballot with the words “voted by absent voters ballot” in addition to the word “cancelled”, and shall place such cards in the “cancelled file” provided to be kept by county clerks for such purpose, and the names of electors whose registry cards bear the stamp “voted by absent voters ballot” shall not be replaced on the official register of qualified voters until such electors shall have re-registered as herein provided. [L. '37, Ch. 147, § 2, amending R. C. M. 1935, § 562. Approved and in effect March 16, 1937.]

Section 3 repeals conflicting laws.

570. Cancellation of registry cards—in what cases—method of cancellation—notice—re-registration. The county clerk must cancel any registry card in the following cases:

1. At the request of the party registered.
2. When he has personal knowledge of the death or removal from the county of the person registered, or when duly authenticated certificate of the death of any elector is filed in the names of vital statistics in his office.
3. When there is presented and filed with the county clerk the separate affidavit of three qualified registered electors residing within the precinct, which affidavit shall give the name of such elector, his registry number and his residence, and which affidavit shall show that of the personal knowledge of the affiant, that any person registered does not reside or has removed from the place designated as the residence of such elector.
4. When the insanity of the elector is legally established.
5. Upon the production of a certified copy of a final judgment of conviction of any elector of felony.
6. Upon the production of a certified copy of the judgment of any court directing the cancellation to be made.
7. Upon the cancellation of the registration of any elector as herein provided, the county clerk shall immediately remove from the official register herein provided for the registry of voters and shall deface the name of such elector on the official register by drawing a line through said entry in red ink and the county clerk shall mark the registry card of such elector across the face thereof in red ink with the word “cancelled” and shall place such cancelled cards with the “cancelled file”, as provided for in section 562.

All persons whose names are so removed, except as provided in section 1 [570.1] of this act, and stricken from the said registration books, card indexes, and register of electors, shall within forty-eight hours thereafter, be notified by the county clerk in writing of such removal, by sending a notice to such person to his or her postoffice address, as appearing on such registration books, card indexes, and register of electors. If any persons, whose names are so removed, can and do prove to the county clerk that they are in fact citizens of the United States and otherwise qualified to vote, as provided by law of the state of Montana, then, and in that case, they shall be entitled to re-register as voters. [L. '37, Ch. 172, § 2, amending R. C. M. 1935, § 570. Approved and in effect March 18, 1937.]

Section 7 repeals conflicting laws.

570.1. Registrations—cancellation—card indexes, etc.—disposition—notice—publication. In all counties within the state of Montana, the county clerk and exofficio “regis-

trar" shall, within five (5) days after the first day of June, 1937, cancel all registrations of electors in the county and shall burn all "card indexes", "registry cards" and "affidavits" theretofore executed and signed by any elector for the purpose of registration; also, all copies of the registration books used at any elections theretofore held and shall preserve the "register" theretofore used as a permanent file of the office of the county clerk.

The county clerk must cause to be published in a newspaper of general circulation, published in the county, a notice which shall state that all registrations of electors will be cancelled as of the first day of June, 1937, and that duly qualified electors desiring to vote at any subsequent election in the state of Montana, are required to register in the manner and form provided for under the general registration laws, and laws amendatory thereto, of the state of Montana. Said notice shall be published once a week for a period of four consecutive weeks. Failure to publish said notice shall not affect a registration of electors, nor of any election thereafter held. [L. '37, Ch. 172, § 1. Approved and in effect March 18, 1937.]

Section 7 repeals conflicting laws.

583.1. Violations of act—penalty. Any person who shall make false answers, either for himself or another, or shall violate or attempt to violate any of the provisions of this act, or knowingly encourage another to violate the same, or any public officer or officers, employees, deputies, or assistants, or other persons whomsoever, upon whom any duty is imposed by this act, or any of its provisions, who shall neglect such duty, or mutilate, destroy, secrete, alter or change any such registry books, cards or records required, or shall perform it in such way as to hinder the objects and purposes of this act, shall be deemed guilty of a felony, shall, upon conviction thereof, be punished by imprisonment in the state prison for a period of not less than one (1) year or more than ten (10) years, and if such person be a public officer, shall also forfeit his office, and never be qualified to hold public office, either elective or appointive, thereafter. [L. '37, Ch. 172, § 6. Approved and in effect March 18, 1937.]

Section 7 repeals conflicting laws.

587. Judges of election—how appointed—number—second or additional board—duties—procedure for altering—tally. The board of county commissioners of the several counties at the regular session next preceding a general election, must appoint five judges of election for each precinct in which the voters therein, by the last registration, were two hundred or more and three judges of election for each precinct in which such registration was less than two hundred, provided that in all election precincts in which there were cast three hundred and fifty or more ballots in the last general election or in which the board of county commissioners believe that as many ballots as three hundred and fifty will be cast in the next general election, the board of county commissioners may appoint a second or additional board consisting of five judges for each such precinct, who shall possess the same qualifications as the first board herein mentioned. The judges constituting the second board for each precinct, if such second board shall have been appointed, shall meet at their respective polling places, as designated in the order appointing them, at the time the polls are closed and at said hour or as soon as the first board has completed their duties in regard to the voting, the second board shall take charge of the ballot boxes containing the ballots and shall proceed to count and tabulate the ballots cast as they shall find them deposited in the ballot boxes. In the event that the count is not completed by eight o'clock a. m. of the next following day, the first board shall reconvene and relieve the second board and continue said count until eight o'clock p. m., when if the count is not yet completed, the second board shall reconvene and again relieve the first board, and so, alternately until said boards shall have fully completed the count and certified the returns. The judges constituting the several boards shall number the ballots and count the tallies upon the tally sheets and so indicate upon the tally sheets as to distinctly show the work of each board separately. The board completing the count shall make such certification of returns as is required by law. [L. '37, Ch. 61, § 1, amending R. C. M. 1935, § 587. Approved and in effect February 25, 1937.]

Section 2 repeals conflicting laws.

CHAPTER 62

JUDGES AND CLERKS OF ELECTION

Section

587. Judges of election—how appointed—number—second or additional board—duties—procedure for altering—tally.

CHAPTER 63

ELECTION SUPPLIES

603. Clerk to deliver ballots and stamps to judges of election—stamp, what to contain.

1937. ✓Cited in State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

CHAPTER 63A

ELECTIONS — CANDIDATES — OFFICERS — RESIGNATION — NECESSITY

Section

- 611.1. Elections—public officers—candidates—resignation — necessity — when — failure — effect—emoluments of office—deprivation.
 611.2. Resulting vacancy of office—filling.
 611.3. Applicability of act—exceptions.
 611.4. Construction of act.
 611.5. Partial invalidity of act—effect.

611.1. Elections — public officers — candidates — resignation — necessity — when — failure — effect — emoluments of office — deprivation. Whenever any person holding, occupying or discharging, de jure or de facto, the duties of any elective or appointive office of, for or, or under, or by virtue of the laws of the state of Montana, including the office of United States senator for Montana and the office of representative in congress for any congressional district of Montana or of any county office or position, the term of which is longer than two (2) years, shall become a candidate for election to any elective office under the laws of/or in Montana aforesaid, such person shall forthwith, and in any event at or before the time required for such person to file as a candidate for such office at any primary or special or general election, except where such person is a bona fide candidate for reelection to the identical office then held or occupied by him, resign said office, appointment, place, position, and said resignation shall become effective forthwith on delivery of the same to the proper officer or superior, as the case may be, and in the event of failure so to resign said office, appointment, place, position, as the case may be, the same shall, ipso facto, become wholly vacant and unoccupied, and said former holder or occupant shall have no further right, power or authority therein for any purposes, and no right to any emoluments thereof, notwithstanding the fact that a successor is not appointed or elected; and said vacancy shall become operative to deprive any person of the emoluments of any office, position, employment or place then held in order to carry out the policy of this act. [L. '37, Ch. 116, § 1. Approved March 15, 1937; in effect July 1, 1937.

611.2. Resulting vacancy of office — filling. In all cases the proper appointing or other power shall promptly fill all vacancies occurring because of the provisions of this act, by appointment of qualified persons where permitted by law, preference being given to qualified deputies or assistants then actually

serving in their respective places, if otherwise competent, and by calling any elections requisite to fill such vacancies in cases where elections are now required by law. [L. '37, Ch. 116, § 2. Approved March 15, 1937; in effect July 1, 1937.

611.3. Applicability of act — exceptions. This act shall not apply to any office, position or place, appointive or elective, the incumbent of which is prohibited by law (a) from succeeding himself in said office, position or place, or (b) the incumbent of which is prohibited by law from enjoying more than two (2) successive terms in said office, position or place, or (c) to any office, position or place for which there is no salary, per diem, fees or emoluments prescribed or accruing by law, or (d) to the office of state representative, or to the office of state senator, unless the candidacy of the incumbent for a different office may result in a vacancy in the office of state senator in which case the provisions of this act shall apply, or (e) to the incumbent of any office whose term of office expires within (70) seventy days after the ensuing general election. [L. '37, Ch. 116, § 3. Approved March 15, 1937; in effect July 1, 1937.

611.4. Construction of act. This act shall be construed as a condition subsequent to the tenure or holding of any office, appointment, position or place under the state of Montana, as aforesaid; and it shall not be construed as imposing or providing any additional qualifications for office in any case where such qualifications are now prescribed by the constitution of the United States or the constitution of Montana to the exclusion of the prescription of additional qualifications by the legislative assembly. [L. '37, Ch. 116, § 4. Approved March 15, 1937; in effect July 1, 1937.

611.5. Partial invalidity of act — effect. If any word, clause, sentence, paragraph or sections of this act is, or any one or more thereof in combination are, found unconstitutional, or if the provisions hereof are not applicable to any of the offices, appointments, positions, or places named herein, for any reason, such finding shall not affect or alter the remainder of this act or any part thereof and the same shall stand as valid, the legislative assembly hereby declaring that it would have passed the remainder or residue not found unconstitutional or inapplicable in any event in its effort to insure the adoption of the principle hereof. [L. '37, Ch. 116, § 5. Approved March 15, 1937; in effect July 1, 1937.

Section 6 repeals conflicting laws.

CHAPTER 65

PARTY NOMINATIONS BY DIRECT VOTE —THE DIRECT PRIMARY

Section

654. Canvass of returns—abstracts of votes for governor and senator—for lieutenant governor, etc.—county and precinct officers—tie decided by lot—county clerk's duties—nomination by highest number of votes.
662. County and city central committeemen—names of candidates—printing on ballots—city central committee—terms of office—rules and regulations—meetings—organization.

654. Canvass of returns—abstracts of votes for governor and senator—for lieutenant governor, etc.—county and precinct officers—tie decided by lot—county clerk's duties—nomination by highest number of votes. On the third day after the close of any primary nominating election, or sooner if all the returns be received, the county clerk, taking to his assistance two justices of the peace of the county of different political parties, if practicable, or two members of the board of county commissioners of the county of different political parties, if possible, or one justice of the peace and one member of the board of county commissioners of the county of different political parties, if practicable, shall proceed to open said returns and make abstracts of the votes. Such abstracts of votes for nominations for governor and for senator in congress shall be on one separate sheet for each political party, and shall be immediately transmitted to the secretary of state in like manner as other election returns are transmitted to him. Such abstract of votes for nomination of each party for lieutenant governor, secretary of state, attorney general, state auditor, superintendent of public instruction, railroad commissioners, clerk of the supreme court, state treasurer, justices of the supreme court, members of congress, judges of the district court, and members of the legislative assembly, who are to be nominated from a district composed of more than one county, shall be on one sheet, separately for each political party, and shall be forthwith transmitted to the secretary of state, as required by the following section. The abstract of votes for county and precinct offices shall be on another sheet separately for each political party; and it shall be the duty of said clerk immediately to certify the nomination for each party and enter upon his register of nominations the name of each of the persons having the highest number of votes for nomination as candidates for members of the legislative assembly, county, and precinct offices, respectively, and to notify by mail each person who is so nominated; provided, that when a tie

shall exist between two or more persons for the same nomination by reason of said two or more persons having an equal and the highest number of votes for nomination by one party to one and the same office, the county clerk shall give notice to the several persons so having the highest and equal number of votes to attend at his office at a time to be appointed by said clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared nominated by his party; and said clerk shall forthwith enter upon his register of nominations the name of the persons thus duly nominated, in like manner as though he had received the highest number of the votes of his party for that nomination; and it shall be the duty of the county clerk of every county, on receipt of the returns of any general primary nominating election, to make out his certificate stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the county board of county commissioners at its next term, and the said board shall order the compensation aforesaid to be paid out of the county treasury. In all primary nominating elections in this state, under the provisions of this law, the person having the highest number of votes for nomination to any office shall be deemed to have been nominated by his political party for that office. [L. '37, Ch. 181, § 1, amending R. C. M. 1935, § 654. Approved and in effect March 18, 1937.

Section 2 repeals conflicting laws.

659. Notice of contest.

1936. Eligibility of a candidate to an office is to be decided under statutes providing therefor and this issue has no place in a recount proceeding. The two procedures are different and distinct, and each serves its own purpose in a recount proceeding even honest errors of law on the part of the election officers are not subject to review, but the record alone can be examined on certiorari to determine if a mistake in tabulation has been made. State ex rel. Stone v. District Court, 103 Mont. 515, 63 P. (2d) 147.

1936. If the contents of the ballot box are in such condition, or such irregularities appear, as to render impossible a correct count, due to fraud, then the returns of the election officers must be accepted, for the recomputation is not a substitute for a contest in which the legality of the votes actually cast may be passed upon. State ex rel. Stone v. District Court, 103 Mont. 515, 63 P. (2d) 147.

661. Contest—how tried and decided.

1936. A petition for a recount was improperly dismissed for the reason that an unsuccessful candidate petitioner was disqualified for the office of sheriff because of conviction of felony in the federal court, since neither the district nor the supreme court on appeal could decide such question in a recount proceeding under recount statutes. State ex rel. Stone v. District Court, 103 Mont. 515, 63 P. (2d) 147.

662. County and city central committeemen—names of candidates—printing on ballots—city central committee—terms of office—rules and regulations—meetings—organization.

There shall be elected by each political party, subject to the provisions of this law, at said primary nominating election, two committeemen, one of which shall be a man and one of which shall be a woman, for each election precinct, who shall be residents of such precincts. Any elector may be placed in nomination for committeeman of any precinct by a writing so stating, signed by such elector, and filed in the office of the county clerk within the time required in this act for the filing of petitions naming individuals as candidates for nomination at the regular biennial primary election. The names of the various candidates for precinct committeemen of each political party shall be printed on the ticket of the same in the same manner as other candidates and the voter shall express his choice among them in like manner as for such other candidates. The committeemen thus elected shall be the representatives of their political party in and for such precinct in all ward or subdivision committees that may be formed. The committeemen elected in each precinct in each county shall constitute the county central committee of each of said respective political parties. Those committeemen who reside within the limits of any incorporated city or town shall constitute ex-officio the city central committee of each of said respective political parties and shall have the same power and jurisdiction as to the business of their several parties in such city matters that the county committees have in county matters, save only the power to fill vacancies in said committee, which power is vested in the county central committee. Each committeeman shall hold such position for the term of two years from the date of the first meeting of said committee immediately following their election. In case of a vacancy happening, on account of death, resignation, removal from the precinct, or otherwise, the remaining members of said county committee may select a committeeman to fill the vacancy and he shall be a resident of the precinct in which the vacancy occurred. Said county and city central committees shall have the power to make rules and regulations for the government of their respective political parties in each county and city, not inconsistent with any of the provisions of this law, and to elect two county members of the state central committee, one of which shall be a man and one of which shall be a woman, and the members of the congressional committee, and said committee shall have the same power to fill all vacancies and make rules in their jurisdiction that the county committees have to fill county

vacancies and to make rules. Said county and city central committee shall have the power to make nomination to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary nominating election where such vacancy is caused by death, resignation or removal from the electoral district, but not otherwise. Said committee shall meet and organize by electing a chairman and secretary within thirty days after the candidates of their respective political parties shall have been nominated. They may select managing or executive committees and authorize such subcommittees to exercise any and all powers conferred upon the county, city, state and congressional central committees respectively by this law. The chairman of the county central committee shall call said central committee meeting and not less than fifteen days before the date of said central committee meeting shall publish said call in a newspaper published at the county seat and shall mail a copy of the call, enclosing a blank proxy, to each precinct committeeman. No proxy shall be recognized unless held by an elector of the precinct of the committeeman executing the same. [L. '39, Ch. 84, § 1, amending R. C. M. 1935, § 662. Approved and in effect March 1, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 67

BALLOTS—PREPARATION AND FORM

Section

- 678. Preparation of printed ballots—duty of county clerk—form—other ballots not to be counted—voter may paste or write other names—taking memoranda into polling place.
- 681. Color and size of ballots—names and party of candidates to be printed on ballots—arrangement of names—rotation of names—columns and material to be printed—state and national offices—order of names in first column—county and township offices—order and placement in second column.
- 681.1. State senate and house of representatives—candidates—placement on ballot.
- 682. Repealed.

678. Preparation of printed ballots—duty of county clerk—form—other ballots not to be counted—voter may paste or write other names—taking memoranda into polling place. Except as in this chapter otherwise provided, it shall be the duty of the county clerk of each county to provide printed ballots for every election for public officers in which electors or any of the electors within the county participate, and to cause to be printed on the ballot the names of all candidates,

including candidates for chief justice and associate justices of the supreme court and judges of the district courts, whose names have been certified to, or filed with the county clerk, in the manner provided in this chapter. Ballots other than those printed by the respective county clerks, according to the provisions of this chapter, must not be cast or counted in any election. Any elector may write or paste on his ballot the name of any person for whom he desires to vote for any office, but must mark the same as provided in section 696, and when a ballot is so marked it must be counted the same as though the name is printed upon the ballot and marked by the voter. Any voter may take with him into the polling-place any printed or written memorandum or paper to assist him in marking or preparing his ballot except as otherwise provided in the chapter. [L. '39, Ch. 81, § 1, amending R. C. M. 1935, § 678. Approved and in effect March 1, 1939, amending this section as amended by L. '37, Ch. 203, § 1, approved and in effect March 19, 1937.]

Section 3 repeals sections 682 and 812.12 of R. C. M. 1935, and L. '37, Ch. 193, together with all conflicting laws.

681. Color and size of ballots—names and party of candidates to be printed on ballots—arrangement of names—rotation of names—columns and material to be printed—state and national offices—order of names in first column—county and township offices—order and placement in second column. Ballots for all general elections prepared under the provisions of this chapter must be white in color and of a good quality of paper and the names must be printed thereon in black ink. The ballots used in any one county must be uniform in size and every ballot must contain the name of every candidate whose nomination for any special office specified in the ballot has been certified or filed according to the provisions of law and no other names, except that the names of candidates for president and vice-president of the United States shall appear on the ballot as provided for by section 813 of the revised codes of Montana, 1935.

(A) The name of each candidate nominated shall be printed upon the ballot in but one place and there shall be added after and directly opposite to the name of each candidate nominated, the party or political designation contained in the certificate or [of] nomination of such candidate in not more than three (3) words, except that the political designation of electors for president and vice-president of the United States shall be opposite the whole list thereof, and the names of candidates for chief justice, associate justices, and district

court judges shall each be followed by the following words directly underneath the name of the candidate: "Nominated without party designation." It is provided, however, that whenever any person is nominated for the same office by more than one party the designation of the party which first nominated him shall be placed opposite his name unless he declines in writing, one or more of such nomination, or by written election indicates the party designation which he desires printed opposite his name; or if he is nominated by more than one party at the same time he shall within the time fixed by law for filing certificates of nomination, file with the officer with whom his certificate of nomination is required to be filed, a written election indicating the party designation which he desires printed opposite his name, and it shall be so printed. If he shall fail or neglect to file such an election no party designation shall be placed opposite his name.

(B) The names of all candidates shall be arranged alphabetically according to surnames under the appropriate title of the respective offices. It is provided, however, that, while all of the candidates for the particular office shall remain together in the same box, yet the candidates of the two major parties shall appear on the ballot before and above the candidates of the minor parties and independent candidates. For the purpose of designating the candidates of the two major parties, they shall be those candidates of the two parties whose candidates for governor, excluding independent candidates, have been either first or second, (by receiving the highest or next highest number of votes cast for the office of governor at the particular election) the greatest number of times at the next preceding four (4) general elections. In case of a tie in the number of first or second places, the determination shall be made by going back enough preceding elections to break the tie and no further. All other candidates shall be designated as either independent candidates or as belonging to minor parties. When two or more persons are candidates for election or [for] the same office, including presidential and vice-presidential candidates, it shall be the duty of the county clerk in each of the counties of the state to divide the ballot forms provided by the law for the county, into sets so as to provide a substantial rotation of the names of the respective candidates as follows:

He shall divide the whole number of ballot forms for the county into sets equal in number to the greatest number of candidates for any office, and he shall so arrange said sets that the names of the candidates shall, beginning with a form arranged in alphabetical order,

(for the purposes of rotation of presidential and vice-presidential candidates, the office of president and vice-president, together with presidential electors shall be considered as a group and alphabetized under the name of the candidate for president), be rotated by removing one name from the top of the list for each office and placing said name or number at the bottom of that list for each successive set of ballot forms; provided, however, that no more than one of said sets shall be used in printing the ballot for use in any one precinct, and that all ballots furnished for use in any precinct shall be of one form and identical in every respect. It is further provided that candidates of the two major parties as hereinabove defined shall be rotated as one group and the candidates of the minor parties and independent candidates shall be rotated as another group so that the candidates of the two major parties for a particular office shall appear on the ballot before and above any candidates of the minor parties or independent candidates.

(C) Each ballot shall contain at the top the stub as provided by section 684 of the revised codes and directly underneath the perforated line shall be the following words in bold face type, "VOTE IN ALL COLUMNS." Each ballot shall contain two (2), and not more than two (2) columns for the election of state, national, county and township officers. The first two columns and no others shall be used for the election of officers. Provided, however, that a third column and as many additional columns as may be necessary shall be used for constitutional amendments, and initiative and referendum measures. In the first column and the left, which shall be designated at the head with the words, "state and national", in large bold face type, shall be listed all candidates for state and national offices, including supreme court justices, and district court judges, and in the second column, which shall be designated at the head with the words, "county and township", in large bold face type, shall be listed all candidates for the legislative assembly, county and township offices. The third column and any additional column shall be designated at the head with the words, "initiatives, referendums, and constitutional amendments", in large bold face type, and listed thereunder shall be all proposed constitutional amendments and measures to be voted on by the people at such election. In case there are no such measures, this column shall be eliminated. The columns shall be separated by two straight lines at least one-half an inch apart.

(D) At the bottom of the first column, or the column to the left, there shall be placed the following words, "vote for county and township offices in the next column". At the bottom of the second column, if there be any initiatives, referendums or constitutional amendments, and every column except the last column, there shall be the following words, "vote on initiatives, referendums and constitutional amendments in the next column".

(E) The order of the placement of the offices on the ballot in the first column, or to the left, designated "state and national", shall be as follows: "President and vice-president, together with the presidential electors; United States senator; United States representative in congress; governor; lieutenant governor; secretary of state; attorney general; state treasurer; state auditor; railroad and public service commissioners; state superintendent of public instruction; clerk of the supreme court; chief justice of the supreme court; associate justice or justices of the supreme court; district court judges"; provided, however, that in the years in which any of such offices are not to be elected, such offices shall not be designated, but the order of those offices to be filled shall maintain their relative positions as herein provided.

In the second column, designated, "county and township", the following order of placement shall be observed: "State senator; member or members of the house of representatives; clerk of district court; county commissioner; county clerk and recorder; sheriff; county attorney; county auditor". Such other offices to be elected shall be placed following the foregoing in the order deemed most appropriate by the county clerk. In the third column constitutional amendments shall come first with referendum and initiative measures following.

(F) In case of a short term and a long term election for the same office, the long term office shall precede the short term. The ballots shall be so printed as to give each voter a clear opportunity to designate his choice of candidates by a cross mark, (X) in a square at the left of the name of each candidate. Above each group of candidates for each office shall be printed the words designating the particular office in bold face capital letters and directly underneath the words, "vote for" followed by the number to be elected to such office. As nearly as possible the ballot shall be in the following form: (Stub hereinafter provided for by section 684.)

Perforated Line

VOTE IN ALL COLUMNS

STATE AND NATIONAL	COUNTY AND TOWNSHIP	INITIATIVES, REFERENDUMS AND CONSTITUTIONAL AMENDMENTS
FOR PRESIDENTIAL ELECTORS TO VOTE FOR PRESIDENT AND VICE- PRESIDENT OF THE UNITED STATES	FOR STATE SENATOR	CONSTITUTIONAL AMENDMENTS
VOTE FOR ONE	VOTE FOR ONE	
For President of the United States JOHN DOE Democrat	<input type="checkbox"/> Bill Doe Republican	
For Vice-President of the United States RICHARD DOE	<input type="checkbox"/> John Roe Democrat	
For Presidential Electors: Jane Doe, Helen Doe, Pete Moe, Milton Moe	<input type="checkbox"/>	<input type="checkbox"/> For the Amendment
(Same with other candidates for President and Vice-President together with blank space for write-in.)		<input type="checkbox"/> Against the Amendment
FOR UNITED STATES SENATOR	FOR MEMBER OF THE HOUSE OF REPRESENTATIVES	REFERENDUM NO. 1
VOTE FOR ONE	VOTE FOR TWO	
<input type="checkbox"/> Frank Roe Democrat	<input type="checkbox"/> Allen Doe Republican	
<input type="checkbox"/> Guy Doe Republican	<input type="checkbox"/> Frank Doe Republican	
<input type="checkbox"/>	<input type="checkbox"/> A. R. Roe Democrat	<input type="checkbox"/> For Referendum No. 1

<div>(Same for Congressmen, Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, State Auditor, Railroad and Public Service Commissioners, State Superintendent of Public Instruction and Clerk of the Supreme Court.)</div>	
<div>FOR CHIEF JUSTICE OF THE SUPREME COURT</div>	
<div>VOTE FOR ONE</div>	
<div><input type="checkbox"/></div>	<div>Richard K. O'Doe (Nominated without party designation)</div>
<div><input type="checkbox"/></div>	<div>Tom Row (Nominated without party designation)</div>
<div><input type="checkbox"/></div>	<div></div>
<div>(Continued in like manner for Associate Justice and Judges of the District Court.)</div>	
<div>(VOTE FOR COUNTY AND TOWNSHIP OFFICERS IN THE NEXT COLUMN.)</div>	

<div><input type="checkbox"/></div>	<div>Ole Roe</div>	<div>Democrat</div>
<div><input type="checkbox"/></div>	<div></div>	<div></div>
<div><input type="checkbox"/></div>	<div></div>	<div></div>
<div>(Continued in like manner for all county and township officers.)</div>		
<div>(VOTE ON INITIATIVES, REFERENDUMS AND CONSTITUTIONAL AMENDMENTS IN THE NEXT COLUMN.)</div>		

<div><input type="checkbox"/></div>	<div>Against said Referendum No. 1</div>
<div>INITIATIVE NO. 1</div>	
<div><input type="checkbox"/></div>	<div>For Initiative No. 1</div>
<div><input type="checkbox"/></div>	<div>Against said Initiative No. 1</div>

and continuing in like manner as to all candidates, constitutional amendments, initiatives, and referendums voted on at such election. [L. '39, Ch. 81, § 2, amending R. C. M. 1935, § 681. Approved and in effect March 1, 1939.

Section 3 repeals sections 682 and 812.12 of the revised code of 1935, and chapter 193 of the laws of 1937, together with all conflicting laws.

681.1. State senate and house of representatives — candidates — placement on ballot. At any state or county election in which a member of the state senate or house of representatives is to be elected or nominated, and subject to the provisions of sections 651 and 681 of the revised codes of Montana, 1935, the list of candidates for such offices shall be arranged on the ballot immediately following the other state offices and shall precede any county office on such ballot. [L. '39, Ch. 170, § 1. Approved and in effect March 15, 1939.

Section 2 repeals conflicting laws.

Note. See, also, § 651.

682. Repealed. [L. '39, Ch. 81, § 3, approved and in effect March 1, 1939.

CHAPTER 68

CONDUCTING ELECTIONS—THE POLLS— VOTING AND CHALLENGES

Section

689.1. Elections—hours when polls to be open—special elections.

700. Manner of voting—putting ballots in box—who may — penalties — intending voters — duties.

689.1 Elections — hours when polls to be open—special elections. Whenever any special election is held for the purpose of submitting to the qualified electors of any county, high school district, school district, city or town, the question of incurring an indebtedness for any purpose, issuing bonds or making a special or additional levy for any purpose, the polls shall be open at 12 o'clock noon and shall remain open until 8 o'clock p. m. of the same day; provided, that if any such special election is held on the same day as any general, county, school or municipal election or any primary election and at the same polling places with the same judges and clerks of election, then the polls shall be opened and closed at the same hours as the polls for such general, county, school, municipal or primary election. [L. '37, Ch. 2, § 1. Approved January 30, 1937; effective July 1, 1937.

Section 2 repeals conflicting laws.

695. Delivery of official ballots to elector.

1937. ✓Cited in State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

696. Method of voting.

1937. ✓Cited in State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

700. Manner of voting—putting ballots in box—who may—penalties—intending voters—duties. No person whomsoever, except a judge or judges of election, shall put into the ballot box any ballot, or any paper resembling a ballot, or any other thing whatsoever. Any person or persons violating the foregoing provision shall be guilty of a misdemeanor. Any judge or judges of election who shall knowingly permit a violation of any of the provisions in this section set forth shall be guilty of a felony and be punishable as in this section hereinbefore specified. The person offering to vote must hand his ballot to the judge, and announce his name, and in incorporated cities and towns any such person must also give the name of the street, avenue, or location of his residence, and the number thereof, if it be numbered, or such clear and definite description of the place of such residence as shall definitely fix the same. [L. '37, Ch. 111, § 1, amending R. C. M. 1935, § 700. Approved and in effect March 15, 1937.

Section 2 repeals conflicting laws.

CHAPTER 71

ELECTION RETURNS

Section

782. Election returns by judges—how made—signing envelopes—list and papers—delivery to district court clerk—ballot box.

782.1. Repeal.

783. Repealed.

776. Where ballots are in excess of names on check-list.

1937. ✓Cited in State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

777. What ballots must be counted.

1937. ✓Cited in State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

782. Election returns by judges—how made—signing envelopes—list and papers—delivery to district court clerk—ballot box. The judges must, before they adjourn, inclose in a strong envelope, securely sealed up and directed to the county clerk, the check-lists, all certificates of registration received by them, one of the lists of the persons challenged, one of the poll-books, one of the tally-sheets, and the official oaths taken by the judges and clerks of election; and must inclose

in a separate package or envelope, securely sealed up and directed to the county clerk, all detached stubs from ballots voted and all unused ballots with the numbered stubs attached; and must also inclose in a separate package or envelope, securely sealed up and directed to the county clerk, all ballots voted, including all voted ballots which, for any reason, were not counted or allowed, and indorse on the outside thereof "Ballots Voted". Each of the judges must write his name across the seal of each of said envelopes or packages. The judges must select one of their number, who must forthwith deliver over to the clerk of the district court the other list of persons challenged, the other tally-sheet, and the other poll-book, and all of these must be open to the inspection of all electors for six (6) months thereafter. The ballot box must be returned to the county clerk. [L. '37, Ch. 112, § 1, amending R. C. M. 1935, § 782. Approved and in effect March 15, 1937.

1936.✓ Tally sheets are the primary evidence of the count of the votes. State ex rel. Lynch v. Batani, 103 Mont. 353, 62 P. (2d) 565.

782.1. Repeal. That section 783 of the revised codes of Montana, 1935, be, and the same is hereby repealed. [L. '37, Ch. 112, § 2. Approved and in effect March 15, 1937.

Section 3 repeals conflicting laws.

783. Repealed. [L. '37, Ch. 112, § 2, approved and in effect March 15, 1937.

CHAPTER 72

CANVASS OF ELECTION RETURNS—RESULTS AND CERTIFICATES

797. Certificates issued by the clerk.

1937.✓ The provisions of section 828.6 do not apply to the election of a district judge, in view of section 797 expressly so providing. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

1937.✓ An unsuccessful candidate for the office of district judge comes within the purview of the provisions of section 828.1 et seq. in regard to contesting elections. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

801. State returns, how made.

1937.✓ The contention that provisions of sections 801-805, which apply to candidates for the office of district judge, have been ignored and no attempt made to amend them, and that thereby conflict arises between those provisions, held untenable. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

1937.✓ An unsuccessful candidate for the office of district judge comes within the purview of the provisions of section 828.1 et seq. in regard to contesting elections. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

802. How transmitted.

1937. Cited in State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

803. State canvassers, composition and meeting of board.

1937. Cited in State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

805. Governor to issue commissions.

1937. An unsuccessful candidate for the office of district judge comes within the purview of the provisions of section 828.1 et seq. in regard to contesting elections. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

CHAPTER 74

NON-PARTISAN NOMINATION AND ELECTION OF JUDGES OF SUPREME COURT AND DISTRICT COURT

Section

812.12. Repealed.

812.12. Repealed. [L. '39, Ch. 81, § 3, approved and in effect March 1, 1939.

CHAPTER 77

CONTESTING ELECTIONS

828.1. Recount of votes, order for—application, contents and time for making—hearing—determination by court.

1939.✓ This statute is in no sense a contest statute. It is a recount statute, and it is absolutely independent of the law relating to the contesting of elections, and either or both remedies are still available. State ex rel. Peterson v. District Court, 107 Mont. 482, 86 P. (2d) 403.

1939.✓ Where the recount shows that the unsuccessful candidate received the greater number of votes and to have really been the successful candidate the candidate returned as the successful one on the first count may apply for a recount of the votes in the precincts not covered by the first recount within five days from the time the board of canvassers, after acting as a recount board, in effect necessarily made a correct canvass as a prerequisite to the issuance of the new certificate of election, and declared him to be the unsuccessful candidate. State ex rel. Peterson v. District Court, 107 Mont. 482, 86 P. (2d) 403.

1939.✓ Before the passage of this act there was no provision by which the votes of any one or more precincts could be opened up except on a contest. State ex rel. Peterson v. District Court, 107 Mont. 482, 86 P. (2d) 403.

1939.✓ The supreme court of Montana will not, on application for a writ of supervisory control, instruct the board, under this act, how to proceed with the recount, nor will it examine separate ballots and state what its action should be thereon or impose its discretion on the board in lieu of the district court. State ex rel. Peterson v. District Court, 107 Mont. 482, 86 P. (2d) 403.

1938. ✓ "The computation of the result of the votes as disclosed by a recount has no more effect upon the final and ultimate right to an office than does the computation originally made by the precinct judges and clerks of election, and by the official canvass thereafter made by the canvassing board." State ex rel. Ainsworth v. District Court, 107 Mont. 370, 86 P. (2d) 5.

1938. ✓ While there are many recount statutes in effect in the various states and they are similar in form there are no two alike. The recount theory is invoked in every instance by statutory provision, and each law as a whole and its applicability to specific cases must be construed in the light of the provisions therein. State ex rel. Ainsworth v. District Court, 107 Mont. 370, 86 P. (2d) 5.

1938. ✓ The recount statute was not intended as a contest statute. State ex rel. Ainsworth v. District Court, 107 Mont. 370, 86 P. (2d) 5.

1938. ✓ The recount statute does not assume to set up any tribunal wherein contests for seats in the legislature is to be tried. It does not assume to recognize the existence of a contest. State ex rel. Ainsworth v. District Court, 107 Mont. 370, 86 P. (2d) 5.

1938. ✓ This statute is available to a candidate for the office of state senator. State ex rel. Ainsworth v. District Court, 107 Mont. 370, 86 P. (2d) 5.

1938. ✓ Writ of mandate is the proper remedy to compel the court to proceed under this statute where it refuses to grant a recount to an unsuccessful candidate for state senator, State ex rel. Ainsworth v. District Court, 107 Mont. 370, 86 P. (2d) 5, where it found that the application was sufficient in form and substance, but denied the writ on the erroneous ground that it had no jurisdiction in such a case.

1937. ✓ Sections 828.1-828.7 held not unconstitutional on the ground that the subject was not clearly expressed in the title. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

1937. ✓ Sections 828.1 et seq. are not violative of either the federal constitution or state constitution, Art. 3, § 27, since a public office is a public trust or agency created for the benefit of the people in which the incumbent has no property right, and therefore cannot be deprived of property by a recount, State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115, nor do they violate the due process of law provisions.

1937. ✓ An unsuccessful candidate for the office of district judge comes within the purview of the provisions of section 828.1 et seq. in regard to contesting elections. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

1937. ✓ The time for the institution of contest proceedings begins to run ordinarily from the conclusion of the canvass by the county board of canvassers, but where the board is compelled by court order to reconvene and correct their findings with reference to the vote cast in a certain precinct for some of the candidates, the time begins to run from the date of the completion of the corrected canvass. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

1937. ✓ The board of canvassers acts in a ministerial capacity in canvassing the votes in pursuance of proceedings for a recount brought by an unsuccessful candidate. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

1937. ✓ Where one of the board of canvassers did not obey an order of the district court, hearing an

election contest, to appear at a specified time, the court was not without its jurisdiction in delaying a hearing of contempt charges until the hearing was completed, as against the contention that the board was thereby coerced. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

1937. ✓ The district court, before the completion of the canvass, held entitled to advise the canvassing as to certain matters in regard to procedure in the counting of votes where it did nothing more than direct their attention to the contents of certain applicable statutory provisions. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

1936. ✓ A petition for a recount was improperly dismissed for the reason that an unsuccessful candidate petitioner was disqualified for the office of sheriff because of conviction of felony in the federal court, since neither the district nor the supreme court on appeal could decide such question in a recount proceeding under recount statutes. State ex rel. Stone v. District Court, 103 Mont. 515, 63 P. (2d) 147.

1936. ✓ If the contents of the ballot box are in such condition or such irregularities appear, as to render impossible a correct count, due to fraud, then the returns of the election officers must be accepted, for the recomputation is not a substitute for a contest in which the legality of the votes actually cast may be passed upon. State ex rel. Stone v. District Court, 103 Mont. 515, 63 P. (2d) 147.

1936. ✓ Eligibility of a candidate to an office is to be decided under statutes providing therefor and this issue has no place in a recount proceeding. The two procedures are different and distinct, and each serves its own purpose. In a recount proceeding even honest errors of law on the part of the election officers are not subject to review, but the record alone can be examined on certiorari to determine if a mistake in tabulation has been made. State ex rel. Stone v. District Court, 103 Mont. 515, 63 P. (2d) 147.

1936. ✓ The granting of a recount is somewhat discretionary with the district court, depending upon the showing of cause to justify it. State ex rel. Stone v. District Court, 103 Mont. 515, 63 P. (2d) 147.

1936. ✓ Objection on appeal that ballots were not delivered to the county clerk in sealed receptacles could not be passed upon by the supreme court where facts shown by record were insufficient to sustain objection and point was not argued on appeal. State ex rel. Stone v. District Court, 103 Mont. 515, 63 P. (2d) 147.

1936. ✓ The purpose of this statute is to afford an opportunity to a candidate to secure a recount where there has been an improper count and not where the judges arbitrarily disregarded tally sheets. State ex rel. Lynch v. Batani, 103 Mont. 353, 62 P. (2d) 565.

1936. ✓ The canvassing board consists of merely ministerial officers, and it is their duty to canvass the returns as they find them, and to declare the result of such canvass; and whether the parties voted for are eligible or not is a question to be determined by some other tribunal. State ex rel. Stone v. District Court, 103 Mont. 515, 63 P. (2d) 147.

1936. ✓ Mandamus issued where neither proceedings under recount statute or contest statutes would have afforded adequate and speedy remedy to candidate alleging that the judges wrongfully disregarded tally sheets. State ex rel. Lynch v. Batani, 103 Mont. 353, 62 P. (2d) 565.

1936. ✓ The sole purpose sought to be accomplished by section 828.1 et seq. is to determine, in a doubtful case, whether the official canvass of the vote was correct. State ex rel. Stone v. District Court, 103 Mont. 515, 63 P. (2d) 147.

828.2. Failure to comply with provisions for counting votes, presumption of incorrectness from.

1937. Cited in State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

828.3. Calling in other judge—court not divested of jurisdiction by failure to hear application within prescribed time.

1939. While the judges and clerks of election are not under the jurisdiction of the court on the first count of election ballots, the county commissioners, as a canvassing board, are under its jurisdiction, under this section, until the ballots are counted, the results ascertained, and the certificate, if required, is issued, and has power to compel these things to be done. But the court cannot compel the board to let it do the counting or to direct or order the count. State ex rel. Peterson v. District Court, 107 Mont. 482, 86 P. (2d) 403.

1937. The jurisdiction of the district court does not cease on making an order for the reconvening of the board of canvassers and correction of their original canvass. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

1937. The district court has jurisdiction to receive the final report of the board of canvassers, in an election contest, until the canvass is completed, and it is not completed until the board advises the court that it is completed. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

1937. The district court, before the completion of the canvass, held entitled to advise the canvassing as to certain matters in regard to procedure in the counting of votes where it did nothing more than direct their attention to the contents of certain applicable statutory provisions. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

828.4. Precincts in which recount ordered—deposit of cost of recount—procedure when more than one application for recount made—manner of recounting votes—certificates of election.

1938. The duties of the board on the recount are ministerial rather than judicial. State ex rel. Ainsworth v. District Court, 107 Mont. 370, 86 P. (2d) 5.

1938. "The election certificate given to a candidate for the state senate does not insure his acceptance as a member of that body. It merely furnishes him with prima facie evidence of the fact that a majority of the voters of his district have voted for him. The certificate of election does not evidence any adjudication." State ex rel. Ainsworth v. District Court, 107 Mont. 370, 86 P. (2d) 5.

1938. "The provisions governing the recount of the votes (in the recount statute) are almost identical with the provisions of the statute governing the original count required to be made by the judges and clerks of election." State ex rel. Ainsworth v. District Court, 107 Mont. 370, 86 P. (2d) 5.

1938. "The ascertainment of the result, i.e., the count and the computation of the votes, does not go far enough to impinge upon the constitutional guaranty that each house of the legislative assembly shall be the judges of the elections, returns and

qualifications of its members." State ex rel. Ainsworth v. District Court, 107 Mont. 370, 86 P. (2d) 5.

1937. Objection to the validity of sections 828.1 et seq., contesting elections statute, on ground that it was possible thereunder that a candidate in a district including three or more counties might lose his right of contest in one or more counties, could not be raised by a candidate not so situated. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

828.6. Certificates of election, effect of recount on.

1937. An unsuccessful candidate for the office of district judge comes within the purview of the provisions of section 828.1 et seq. in regard to contesting elections. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

1937. The provisions of section 828.6 do not apply to the election of a district judge, in view of section 797 expressly so providing. State ex rel. Riley v. District Court, 103 Mont. 576, 64 P. (2d) 115.

CHAPTER 79

THE STATE BOARD OF EDUCATION—ITS COMPOSITION, POWERS, AND DUTIES

Section

836a. Degrees and honors—right of educational institutions to award—approval by board.

836b. Violation of act—penalty.

830. Membership.

1936. The board of education is one of the governmental agencies of the state. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

833. Officers.

1936. The powers and duties vested in state board of education and the superintendent of public instruction, on the one hand, and the local board of school trustees, on the other, are supreme so long as each body acts within the law in its respective sphere and does nothing arbitrarily or capriciously. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

836. Powers and duties.

1936. ✓ In the absence of a showing that the state board of education acted arbitrarily or capriciously in refusing to accredit a high school as a 3-year high school a local board of school trustees could not mandamus the board to accredit such school. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Where a local board of school trustees failed to obtain the approval of the state superintendent of public instruction for the establishment of a 3-year high school it was not entitled to a hearing before the board of education, the refusal of approval being justified. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The question of the financial advisability of accrediting a high school as a 3-year high school held for the discretionary decision of the state board of education and the superintendent of public instruction. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Writ of mandamus will lie at the instance of a local board of school trustees to compel the state board of education to act on the question of accrediting a high school as a 3-year high school, if the required preliminary steps have been taken, but not to control its decision or discretion. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Mandamus will not lie against the state board of education unless there is a clear legal right in the petitioner; a clear legal duty not involving discretion to act on the part of the board; and the right will be an effectual remedy. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Since the members of the board of education must serve without compensation it is obvious that the legislature intended to have other state officers and employees assemble the necessary facts and information essential to the exercise of the board's supervision and to base its decisions on. The department of the superintendent of public instruction is the chief source of the detailed information upon which the board must depend. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The board of education is authorized, without approval of electors, to borrow funds from the federal government to erect a chemistry-pharmacy building in connection with the Montana state university at Missoula under laws of extraordinary session 1933-34, chapter 24, as amended by chapter 36 of the same session and to issue bonds pledging the income and interest from the university land grant contained in section 14 of the enabling act. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

1936. ✓ Under sections 877.6 et seq. the board of education had the power to borrow money for the erection of a journalism building at the state university and to pledge therefor the income and interest from the university land grant fund. State ex rel. Wilson v. State Board of Education, 102 Mont. 165, 56 P. (2d) 1079.

1936. ✓ The trustees of a local school district cannot mandamus the state board of education to accredit district school as a 3-year high school in the absence of a showing of performance of legal acts preliminary thereto on part of the board of trustees, such as approval of superintendent of public instruction, and demand on the state board. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The powers and duties vested in state board of education and the superintendent of public instruction, on the one hand, and the local board of school trustees, on the other, are supreme so long as each body acts within the law in its respective sphere and does nothing arbitrarily or capriciously. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Both the state board of education and the superintendent of public instruction and the local boards of school trustees are quasijudicial bodies or officials, and both exercise discretionary powers, and when such powers are exercised in the manner prescribed by law, no right of review exists. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Constitution, Art. 11, § 11, vests in the state board of education general control over and supervision of all state educational matters, including

district and high schools. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The state board of education is a part of the executive department of the state government. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

836a. Degrees and honors—right of educational institutions to award—approval by board. No person, corporation, association or institution shall issue or award any degree or similar literary honors as are usually granted by universities or colleges, without first having secured the approval of the state board of education of the state of Montana of the adequacy of the course of work or study for which such degree or other literary honor is offered; provided, however, that this shall not apply to any educational institution accredited by an educational accrediting association whose accrediting is found by said state board to be generally recognized by state and other universities in the United States. [L. '39, Ch. 14, § 1. Approved and in effect February 9, 1939.

Section 3 repeals conflicting laws.

836b. Violation of act—penalty. Any person, corporation, association or institution violating any of the provisions of this act shall be guilty of a misdemeanor. [L. '39, Ch. 14, § 2. Approved and in effect February 9, 1939.

Section 3 repeals conflicting laws.

CHAPTER 82

THE UNIVERSITY OF MONTANA

853. Control vested in state board of education—appointment of employees, and chancellor.

1939. ✓ The regulations of the state board of education made within jurisdiction have the force of law, and become part of the contracts made thereunder to the same effect. Striking the regulations from the contract could have no more effect than striking a provision of the statute, and the acceptance of the contract would no more constitute a waiver of the regulation than it would constitute a waiver of the statute. State ex rel. Keeney v. Ayers, Governor et al., Mont., 92 P. (2d) 306.

1936. The board of education is authorized, without approval of electors, to borrow funds from the federal government to erect a chemistry-pharmacy building in connection with the Montana state university at Missoula under laws of extraordinary session 1933-34, chapter 24, as amended by chapter 36 of the same session and to issue bonds pledging the income and interest from the university land grant contained in section 14 of the enabling act. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

1936. This provision merely vests control over the state educational institutions in the board of education and authorizes the legislature to define and

circumscribe the powers and duties of the board. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

1936. The board of education is one of the governmental agencies of the state. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

855. Duties of state board of education.

1936. The board of education is authorized, without approval of electors, to borrow funds from the federal government to erect a chemistry-pharmacy building in connection with the Montana state university at Missoula under laws of extraordinary session 1933-34, chapter 24, as amended by chapter 36 of the same session and to issue bonds pledging the income and interest from the university land grant contained in section 14 of the enabling act. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

1936. This provision merely vests control over the state educational institutions in the board of education and authorizes the legislature to define and circumscribe the powers and duties of the board. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

1936. The board of education is one of the governmental agencies of the state. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

CHAPTER 83

MONTANA STATE UNIVERSITY—STATE FOREST AND CONSERVATION EXPERIMENTAL STATION—JOURNALISM BUILDING

Section

- 877.1. State forest and conservation experimental station—establishment—part of Montana state university.
- 877.2. Director—assistants and employees.
- 877.3. Purposes of station.
- 877.4. Reports—publication.
- 877.5. Dean and personnel of school—oath of office—duties.
- 877.6. Journalism building at state university—erection—authorization—purpose.
- 877.7. Same—federal funds—procuration—state board of education—powers.
- 877.8. Same—building site—conveyance to federal government—rental for building—purchase option.
- 877.9. Same—cost—liability—state of Montana—source of payment—maintenance of building.
- 877.10. Same—purpose of act—partial invalidity saving clause.

861. Establishment and purpose of the state university.

1936. The board of education is authorized, without approval of electors, to borrow funds from the federal government to erect a chemistry-pharmacy building in connection with the Montana state university at Missoula under laws of extraordinary session 1933-34, chapter 24, as amended by chapter 36 of the same session and to issue bonds pledging the income and interest from the university land

grant contained in section 14 of the enabling act. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

863. Departments of the university.

1936. The board of education is authorized, without approval of electors, to borrow funds from the federal government to erect a chemistry-pharmacy building in connection with the Montana state university at Missoula under laws of extraordinary session 1933-34, chapter 24, as amended by chapter 36 of the same session and to issue bonds pledging the income and interest from the university land grant contained in section 14 of the enabling act. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

868. Appropriations for support of university.

1936. The board of education is authorized, without approval of electors, to borrow funds from the federal government to erect a chemistry-pharmacy building in connection with the Montana state university at Missoula under laws of extraordinary session 1933-34, chapter 24, as amended by chapter 36 of the same session and to issue bonds pledging the income and interest from the university land grant contained in section 14 of the enabling act. State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 P. (2d) 330.

877.1. State forest and conservation experimental station — establishment — part of Montana state university. There is hereby established in the Montana state university, forestry school, a station to be known as the Montana forest and conservation experiment station, which shall be under the direction of the state board of education. [L. '37, Ch. 141, § 1. Approved and in effect March 16, 1937.

877.2. Director — assistants and employees. The dean of the forestry school, whoever shall hold that office from time to time, shall be the director of said Montana forest and conservation experiment station. The state board of education shall have the power and it shall be its duty to appoint or designate such assistants and employees as may be necessary, and to fix the compensation of all persons connected with said station. [L. '37, Ch. 141, § 2. Approved and in effect March 16, 1937.

877.3. Purposes of station. It shall be the purpose of this station:

1st. To study the forest and forest land resources of the state to the end that the state and its citizens may attain the highest economic and social benefits from the forest soils within the state and the influences and products flowing therefrom.

2nd. To study the growth and the utilization of timber with special reference to their improvement and the widening of the markets available to the state.

3rd. To determine the relationship between the forest and water conservation and water-

flow regulation; the forest and pasturage for domestic livestock and wild life; the forest and recreation and those other direct and indirect benefits that may be secured by the maintenance of or the establishment of forests or woodlands.

4th. To study and develop the establishment of windbreaks, shelter belts and woodlots on the farms of the state that moisture may be conserved thereby for the best production of agricultural crops and forage; for the prevention of soil wastage and erosion; to make the farm home more comfortable and to produce forest material for the use of the farmer and the stockman.

5th. To study the findings of other agencies that the information thus obtained may be used to improve the growth, management and utilization of the timber within the state and to protect it against damage by fire, insects, disease and other harmful agencies.

6th. To collect, to compile and to publish statistics relative to Montana forests and forestry and the influences flowing therefrom; to prepare and publish bulletins and reports, with the necessary illustrations and maps that the information collected by said station in forestry and in conservation may be made available for use and to distribute said information or material in such other ways as the state board of education may direct.

7th. To collect a library and bibliography of literature pertaining to or useful for the purpose of this act.

8th. To study logging, lumbering and milling operations and other operations dealing with the products of forest soils with special reference to their improvement; to investigate, and make tests of forest products produced or that may be produced within the state that markets may be improved thereby.

9th. To consider such other scientific and economic problems as, in the judgment of the state board of education, are of value to the people of the state.

10th. To cooperate with the other departments of the university of Montana, the state forester and the state board of land commissioners, the state fish and game commission, the state livestock commission and with other departments and branches of the state government when mutually beneficial, with private individuals and agencies; and to cooperate with the United States government and its branches as a land grant institution, or otherwise, in accordance with their regulations.

11th. To establish such field experiment stations as in the judgment of the state board of education may be necessary. The state board of education is hereby authorized to

accept, for and in behalf of the state of Montana; such gifts of land or other donations as may be made to the state for the purposes of this act. [L. '37, Ch. 141, § 3. Approved and in effect March 16, 1937.

877.4. Reports — publication. The state board of education may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the state board of education may direct, and as the interests of the state and of science and industry may demand. [L. '37, Ch. 141, § 4. Approved and in effect March 16, 1937.

877.5. Dean and personnel of school—oath of office — duties. The dean of the forestry school, the officers and employees of said station, appointed or assigned, and their assistants shall take an oath to perform all the services required of them under this act and to guard carefully all confidential information accumulated in the progress of their work; and to turn into the station as state property all correspondence, notes, illustrations, and data of any kind accumulated by them in performing the work of the station. [L. '37, Ch. 141, § 5. Approved and in effect March 16, 1937.

877.6. Journalism building at state university—erection—authorization—purpose. That the state board of education is authorized to erect a journalism building at the Montana state university at Missoula, at a cost not to exceed two hundred thousand dollars (\$200,000.00) for said building, for the purpose of providing the necessary class rooms, laboratories, offices, and other accommodations for the department of journalism, and for such other purposes as in the judgment of the state board of education may be required for the proper conduct, management and operation of said departments. [L. '35, Ch. 133, § 1. Approved and in effect March 13, 1935.

1936. This act held constitutional in *State ex rel. Wilson v. State Board of Education*, 102 Mont. 165, 56 P. (2d) 1079.

877.7. Same—federal funds—procurement—state board of education—powers. In carrying out the above powers, said board may enter into a contract or contracts with the United States of America, or with any department, officer, agency or representative thereof, for the purpose of procuring from the United States the funds and moneys necessary for the erection of said building. To that end the board may enter into such contracts or other arrangements as the laws of congress hereafter enacted, or regulations adopted pursuant thereto, may require for the purpose of pro-

curing federal funds for the erection of said building, and the said state board of education is authorized to make such contracts in such form as may satisfy the requirements of the United States in respect thereto, the purpose and intent of this act being to confer upon the state board of education full power to take advantage, for the state of Montana and for said Montana state university, of such benefits and advantages as may be obtainable under the acts of congress now contemplated and in process of enactment for the purpose of providing employment and the financing of public works, and to that end there is hereby conferred upon the state board of education full power to make such contracts and do such things as may be required to procure the erection of said building, from funds provided by congress under any public works program that may hereafter be enacted by congress. [L. '35, Ch. 133, § 2. Approved and in effect March 13, 1935.]

1936. This act impliedly gives the board of education the power to borrow money to facilitate the carrying out of the purposes of the act, and to issue negotiable bonds therefor. State ex rel. Wilson v. State Board of Education, 102 Mont. 165, 56 P. (2d) 1079.

1936. The board of education would not violate the constitutional provisions relative to state finances, appropriations, disbursements, and indebtedness, by pledging the income and interest from the university land grant fund as security for money borrowed from the federal government for the erection of a journalism building at the state university. State ex rel. Wilson v. State Board of Education, 102 Mont. 165, 56 P. (2d) 1079.

1936. Under sections 877.6 et seq. the board of education had the power to borrow money for the erection of a journalism building at the state university and to pledge therefor the income and interest from the university land grant fund. State ex rel. Wilson v. State Board of Education, 102 Mont. 165, 56 P. (2d) 1079.

877.8. Same—building site—conveyance to federal government—rental for building—purchase option. Without in any manner limiting or qualifying the means to be adopted, or the things to be done by the said state board of education to accomplish and effectuate the creation of said building, it is hereby provided that the said state board of education shall have power, if required so to do, to cause to be conveyed to the United States title to the ground upon which said building may be erected, and to contract with the United States, or the proper representatives or agencies thereof, for the payment to the United States of rental or other compensation for the use of said building, and in that connection the said state board of education may procure for and on behalf of the state of Montana the option, on such terms as may be acceptable to the United States, to purchase

and acquire title to the said building and the ground upon which the same may be erected. [L. '35, Ch. 133, § 3. Approved and in effect March 13, 1935.]

877.9. Same—cost—liability—state of Montana—source of payment—maintenance of building. No contract or obligation entered into or created hereunder shall ever be, or become, a charge against or obligation, debt, or liability of the state of Montana, but all obligations for the payment of money shall be payable solely from such funds as may be available from time to time to the state board of education for operation and maintenance of the said Montana state university. Nothing in this act shall be so construed as in anywise to hold the state of Montana liable for the payment of contracts or other obligations herein authorized. Provided, however, that the state board of education shall make provisions for the maintenance of this building. [L. '35, Ch. 133, § 4. Approved and in effect March 13, 1935.]

1936. The board of education would not violate the constitutional provisions relative to state finances, appropriations, disbursements, and indebtedness, by pledging the income and interest from the university land grant fund as security for money borrowed from the federal government for the erection of a journalism building at the state university. State ex rel. Wilson v. State Board of Education, 102 Mont. 165, 56 P. (2d) 1079.

1936. Under sections 877.6 et seq. the board of education had the power to borrow money for the erection of a journalism building at the state university and to pledge therefor the income and interest from the university land grant fund. State ex rel. Wilson v. State Board of Education, 102 Mont. 165, 56 P. (2d) 1079.

1936. This act impliedly gives the board of education the power to borrow money to facilitate the carrying out of the purposes of the act, and to issue negotiable bonds therefor. State ex rel. Wilson v. State Board of Education, 102 Mont. 165, 56 P. (2d) 1079.

1936. Where there was nothing to indicate that the board of education intended to obligate itself to make use of a building fee for the redemption of proposed bonds to be issued for money borrowed for the erection of a journalism building at the state university, the proposed issue of the bonds was held valid. State ex rel. Wilson v. State Board of Education, 102 Mont. 165, 56 P. (2d) 1079.

877.10. Same—purpose of act—partial invalidity saving clause. It is hereby declared to be the purpose of this act to confer upon the said state board of education the full power to do all things and acts not in conflict with the constitution of the United States, or the constitution of the state of Montana, which said state board of education may find necessary or reasonably adapted to accomplish the object herein specified, viz., the erection of the said building for the Montana state university at Missoula, and if any part or

portion of this act should be found or declared to be unconstitutional, the remainder of this act shall in nowise be invalidated or nullified, but the decision as to the unconstitutionality or invalidity of any portion of this act shall be confined to such portion, and shall not extend to or involve the remainder of this act, which shall be given full force and effect. [L. '35, Ch. 133, § 5. Approved and in effect March 13, 1935.]

CHAPTER 84

MONTANA SCHOOL OF MINES—STATE BUREAU OF MINES AND GEOLOGY

Section

884. Objects and duties of bureau.

884. Objects and duties of bureau. The bureau shall have for its object and duties the following:

1. To collect, to compile, and to publish statistics relative to Montana geology, mining, milling and metallurgy.

2. To collect typical geological and mineral specimens and samples of products; to collect photographs, models, and drawings of appliances used in the mines, mills and smelters of Montana.

3. To collect a library and a bibliography of literature pertaining to or useful for the progress of geology, mining, milling, and smelting in Montana.

4. To study the geological formations of the state, with special reference to their economic mineral resources, both metallic and non-metallic.

5. To examine the topography and physical features of the state with reference to their practical bearing upon the occupation of the people.

6. To study the mining, milling, and smelting operations carried on in the state, with special reference to their improvement.

7. To prepare and to publish bulletins and reports, with necessary illustrations and maps, which shall embrace both a general and a detailed description of the natural resources and geology, mines, mills and reduction plants of the state.

8. To make qualitative examinations of rocks and mineral samples.

9. To consider such other scientific and economic problems as in the judgment of the state board of education are of value to the people of the state.

10. To communicate special information on Montana geology, mining and metallurgy.

11. To cooperate with the other departments of the university of Montana, with the state mine inspector, and with other departments of the state government as may be mutually beneficial; and to cooperate with the United States geological survey and with the United States bureau of mines, in accordance with the regulations of those institutions.

12. It shall also be the duty of the bureau of mines and geology, upon the request of the department of state lands and investments, to make examinations of state lands with regard to their geological formation and structure and as to all features relating to the character, extent and probable value of mineral deposits therein, including oil and gas; provided, however, that these services by the bureau shall be limited to the time that its personnel has available for such work in addition to its duties as defined in the preceding sections. Written reports shall be prepared of the examinations made.

Subject to the same limitations and conditions as above enumerated, the bureau of mines and geology shall carry on field examinations for other branches and agencies of the government of the state.

Traveling expenses incurred by the examiner, including meals, lodging and incidental expenses, shall be paid by the department requesting the examination from available appropriations upon the presentation of claims in the ordinary form. [L. '37, Ch. 58, § 1, amending R. C. M. 1935, § 884. Approved and in effect February 25, 1937.]

Section 2 repeals conflicting laws.

CHAPTER 90A

STATE CORRESPONDENCE SCHOOL

Section

930.5. State correspondence school—establishment—purposes—students served—registration fee.

930.6. State correspondence school—director—rules and regulations.

930.7. State correspondence school—funds—source.

930.5. State correspondence school — establishment — purposes — students served — registration fee. There is hereby created a state correspondence school which shall serve the needs of (1) eighth grade graduates who because of remoteness or inability are unable to attend a regular high school, (2) students who need subjects not offered in a regular high school, and (3) home-bound incapacitated children who are unable to attend a regular school; providing that the service of this school upon the payment of a registration fee not to exceed one dollar (\$1.00) per semester

course, shall be available to all high school students residing five (5) or more miles from a high school and three (3) or more miles from a regularly established bus line, and further providing that the service of this school shall be available to students of a regular high school for a course or courses not offered in the high school they are attending and which course or courses are necessary for high school graduation upon payment of a registration fee not to exceed four dollars (\$4.00) per semester course; providing that eighth grade graduates who because of remoteness or inability are unable to attend a regular high school shall attend a rural school subject to the rules and regulations thereof. Students may for good cause be excused from such attendance upon the approval of the county superintendent. [L. '39, Ch. 70, § 1. Approved and in effect February 28, 1939.]

930.6. State correspondence school—director—rules and regulations. The director of the Montana supervised correspondence study school shall be appointed by the state superintendent of public instruction, and the rules and regulations necessary for the proper conduct of this school shall be made by the state superintendent of public instruction subject to the approval of the state board of education. [L. '39, Ch. 70, § 2. Approved and in effect February 28, 1939.]

930.7. State correspondence school—funds—source. The state shall set aside annually not to exceed seventeen thousand five hundred dollars (\$17,500.00) from the state public school general fund. Such sum shall be allotted to the state department of public instruction for the purpose of carrying out the provisions of this act. In addition thereto, all fees collected under the provisions of section one (1) [930.5] of this act are hereby appropriated. [L. '39, Ch. 70, § 3. Approved and in effect February 28, 1939.]

CHAPTER 90B

JUNIOR COLLEGES

Section

- 930.8. Junior colleges—definitions.
- 930.9. Method of establishment.
- 930.10. Approval of superintendent of public instruction.
- 930.11. Election.
- 930.12. Establishment of junior college upon approval of electors.
- 930.13. Location and faculty.
- 930.14. Powers of state superintendent of public instruction.
- 930.15. General administration.

Section

- 930.16. Tuition and budgeting.
- 930.17. Establishment and operation—requirements.
- 930.18. Classes of students — requirements for diploma.
- 930.19. Qualifications of dean and instructors.

930.8. Junior colleges—definitions. The word “superintendent” as used in this act shall mean the superintendent of a district high school and the word “principal” as used in this act, means the principal of a county high school organized under the laws of the state of Montana. A “junior college” is hereby defined to be a public school established as provided in this act, in connection with accredited high schools for the purpose of providing one or more two year courses beyond those of the four year high school. [L. '39, Ch. 158, § 1. Approved and in effect March 11, 1939.]

930.9. Method of establishment. County high school boards or district high school boards operating accredited schools shall have authority to establish and maintain in such schools in the manner provided in this act, a department of junior college work, to consist of not more than two years work beyond the four year high school course. Whenever a county high school board or a district high school board operating an accredited high school shall receive a petition in writing signed by not less than twenty-five per cent of the registered voters of the county, in case the petition be filed with the county high school board, or by not less than twenty-five per cent of the registered voters of the school district in case such petition is filed with a district school board, requesting the establishment in such school of a department of junior college work, the board shall spread said petition upon its minutes. If said petition is found by the board to be signed by the requisite number of qualified voters, as disclosed by the registration lists for the last preceding election, the board shall not later than its next regular meeting, communicate to the state superintendent of public instruction the fact of the filing of such petition together with such pertinent facts and information as the board may have regarding the desirability of establishing such junior college department, together with the recommendations of the board relative to said matter. The board may also on its own initiative, and without the filing of any petition, adopt and spread upon its minutes a resolution requesting the establishment of such junior college and shall submit the same to the state superintendent of public instruction for his approval. [L. '39, Ch. 158, § 2. Approved and in effect March 11, 1939.]

930.10. Approval of superintendent of public instruction. The state superintendent of public instruction shall consider all such petitions submitted by county or district high school boards and may, if he deem it advisable, conduct an independent investigation with a view to determining the desirability of granting such petition. If the superintendent of public instruction shall approve of the granting of such petition, he shall notify the county or district high school boards of his approval of the petition. The county or district high school board shall thereupon submit to the registered voters of the county or district the question whether or not a junior college shall be established in their said county or district high school. [L. '39, Ch. 158, § 3. Approved and in effect March 11, 1939.]

930.11. Election. In any election held under the terms of this act, all qualified voters of the county or district shall be entitled to vote. All such elections shall be called, noticed, held, canvassed and returned in the manner provided by law for the submission in such county or school district of the question of a bond issue for the purpose of building, enlarging, altering or acquiring by purchase a school house and the purchase of necessary lands therefor. [L. '39, Ch. 158, § 4. Approved and in effect March 11, 1939.]

930.12. Establishment of junior college upon approval of electors. If a majority of the votes cast at any election provided for in this act be in favor of the establishment of a junior college, the county or district high school board shall proceed to establish such junior college in the following manner: Not later than September first of the first year in which such junior college is proposed to be established, the county or district high school board shall apply to the superintendent of public instruction for permission to open such junior college, and shall accompany such application with a full statement of the curricula to be maintained and an application on behalf of the high school to be classified as a junior college. If the state superintendent of public instruction approves the application, he shall so notify the state board of education, which shall finally approve or disapprove of the establishment of such proposed junior college, and shall promptly notify the county or district high school board of its action. Upon receiving the final approval of the state board of education, the county or district high school boards shall have authority to proceed with the establishment and operation of such junior college. [L. '39, Ch. 158, § 5. Approved and in effect March 11, 1939.]

930.13. Location and faculty. Every junior college shall be located in either a county maintaining a county high school or in a school district which maintains an accredited high school. There shall be employed for each such junior college a dean and at least the equivalent in point of teaching time of two or more junior college teachers who, together with the superintendent of the district high school or the principal of the county high school, shall constitute the faculty of the junior college. [L. '39, Ch. 158, § 6. Approved and in effect March 11, 1939.]

930.14. Powers of state superintendent of public instruction. The state superintendent of public instruction shall have and exercise the same supervision, control and power over all junior colleges established hereunder, as he now has over other departments of the public school system. [L. '39, Ch. 158, § 7. Approved and in effect March 11, 1939.]

930.15. General administration. Subject to the control of the state superintendent of public instruction, the superintendent of the district high school or the principal of the county high school, shall administer and exercise general supervision over the junior college, and shall make such reports as the state superintendent of public instruction may require. All teachers in junior colleges shall be employed in the same manner as now provided by law for the employment of high school teachers. Such superintendent or principal shall examine the certification of all persons under consideration as teachers in a junior college, and shall recommend for employment only such persons as are found to be fully qualified in accordance with the standards established by the state board of education and those standards hereinafter specified. He shall also keep a record of such certification and on or before October first of each year, shall transmit a copy of this record to the state superintendent of public instruction. [L. '39, Ch. 158, § 8. Approved and in effect March 11, 1939.]

930.16. Tuition and budgeting. The county high school board or district high school board shall be authorized to include in their budget a sufficient sum to operate and maintain the junior college departments as herein provided, the amount of such budget to be left to their determination. Such boards are also empowered in their discretion, when they shall deem it necessary, to charge tuition at a maximum rate of not exceeding one hundred twenty-five and no/100 (\$125.00) dollars per year for attendance at junior colleges established under the terms of this act. [L. '39,

Ch. 158, § 9. Approved and in effect March 11, 1939.

930.17. Establishment and operation—requirements. The following requirements shall govern the operation of all junior colleges:

a. A junior college shall be established in any county or school district only when the assessed taxable valuation of such county or school district exceeds \$3,000,000.

b. The building space available for the use of a junior college must be modern, adequate and well adapted to the needs of the work to be undertaken.

c. There shall be provided a general and reference library, well chosen and adequate for the courses offered and for the size of the enrollment in the junior college.

d. Suitable laboratory space and equipment must be provided for such advanced work in the natural sciences as is included in the courses offered.

e. Not counting the superintendent or principal of the county high school, there must be provided a faculty of not fewer than two members.

f. The superintendent or principal of the county high school shall prescribe the duties of the dean and such duties may be made to include instruction, organization, classification, discipline and management of the junior college.

g. The junior college year shall consist of at least nine months, or thirty-six weeks.

h. The minimum length of a recitation period shall be fifty minutes. [L. '39, Ch. 158, § 10. Approved and in effect March 11, 1939.]

930.18. Classes of students—requirements for diploma. Two classes of students may be admitted to a junior college.

a. Regular students limited to those who have completed, in a satisfactory manner, a full high school course or its equivalent.

b. Special students who wish to pursue special courses of college rank and who are deemed by the local authority fully qualified to do so.

No school board or high school board shall under any condition, issue to any person a certificate or diploma showing the completion of a junior college course except upon the recommendation of the superintendent of the district high school or principal of the county high school, and a two-year certificate or diploma shall be recommended only upon the completion in a creditable manner of at least sixty semester hours, or its equivalent, in a course approved by the state board of education. [L. '39, Ch. 158, § 11. Approved and in effect March 11, 1939.]

930.19. Qualifications of dean and instructors. The dean and all instructors in a junior college must have the following qualifications:

a. Scholastic training of at least a master's degree or its equivalent, from a college recognized as fully entitled to confer such degree.

b. Professional training, at least fifteen semester hours in education. [L. '39, Ch. 158, § 12. Approved and in effect March 11, 1939.]

Section 13 repeals conflicting laws.

CHAPTER 91

THE PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION

Section

933. Official staff—personnel—salaries—music supervisor—duties.

932. General powers.

1936. Both the state board of education and the superintendent of public instruction and the local boards of school trustees are quasi-judicial bodies or officials, and both exercise discretionary powers, and when such powers are exercised in the manner prescribed by law, no right of review exists. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. The powers and duties vested in state board of education and the superintendent of public instruction, on the one hand, and the local board of school trustees, on the other, are supreme so long as each body acts within the law in its respective sphere and does nothing arbitrarily or capriciously. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. Since the members of the board of education must serve without compensation it is obvious that the legislature intended to have other state officers and employees assemble the necessary facts and information essential to the exercise of the board's supervision and to base its decisions on. The department of the superintendent of public instruction is the chief source of the detailed information upon which the board must depend. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. Where a local board of school trustees failed to obtain the approval of the state superintendent of public instruction for the establishment of a 3-year high school, it was not entitled to a hearing before the board of education, the refusal of approval being justified. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. The question of the financial advisability of accrediting a high school as a 3-year high school held for the discretionary decision of the state board of education and the superintendent of public instruction. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

933. Official staff—personnel—salaries—music supervisor—duties. The superintendent of public instruction shall have the power to

appoint one deputy, who shall receive an annual salary of twenty-five hundred dollars, one high school supervisor at an annual salary of twenty-five hundred dollars, one rural school supervisor at an annual salary of twenty-five hundred dollars each, one music supervisor at an annual salary of twenty-five hundred dollars, one clerk at an annual salary of fifteen hundred dollars, and two stenographers at an annual salary of twelve hundred dollars each. Such deputy, high school supervisor, rural school supervisor, clerk, and stenographers shall perform such duties pertaining to the office as the superintendent may direct. Such music supervisor shall be qualified to perform the following duties: Supervise the teaching of music in the graded, rural and high schools of this state, and assist the teachers and faculty in said schools in establishing and carrying out a progressive music program for the benefit of all children in the public schools of the state, supervise and direct the examinations, issuance of certificates, keeping of records in connection with the foregoing duties, and perform all other duties required in carrying on the work in applied music as prescribed in sub-section 10 of section 1092 revised codes of Montana, 1935, and the laws of Montana relating to music education in the public schools. The music supervisor must possess the following qualifications: A graduate in public school music from an accredited college or university, and said supervisor shall have had five (5) years teaching experience in public school music. The music supervisor shall perform only such duties as apply to music supervision. [L. '37, Ch. 149, § 1, amending R. C. M. 1935, § 933. Approved and in effect March 16, 1937.]

Section 2 repeals conflicting laws.

939. Report.

- ✓ 1936. Since the members of the board of education must serve without compensation it is obvious that the legislature intended to have other state officers and employees assemble the necessary facts and information essential to the exercise of the board's supervision and to base its decisions on. The department of the superintendent of public instruction is the chief source of the detailed information upon which the board must depend. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

941. Course of study.

- ✓ 1936. Both the state board of education and the superintendent of public instruction and the local boards of school trustees are quasijudicial bodies or officials, and both exercise discretionary powers, and when such powers are exercised in the manner prescribed by law, no right of review exists. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.
- ✓ 1936. The powers and duties vested in state board of education and the superintendent of public in-

struction, on the one hand, and the local board of school trustees, on the other, are supreme so long as each body acts within the law in its respective sphere and does nothing arbitrarily or capriciously. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Since the members of the board of education must serve without compensation it is obvious that the legislature intended to have other state officers and employees assemble the necessary facts and information essential to the exercise of the board's supervision and to base its decisions on. The department of the superintendent of public instruction is the chief source of the detailed information upon which the board must depend. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The trustees of a local school district cannot mandamus the state board of education to accredit district school as a 3-year high school in the absence of a showing of performance of legal acts preliminary thereto on part of the board of trustees, such as approval of superintendent of public instruction, and demand on the state board. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Where a local board of school trustees failed to obtain the approval of the state superintendent of public instruction for the establishment of a 3-year high school, it was not entitled to a hearing before the board of education, the refusal of approval being justified. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The question of the financial advisability of accrediting a high school as a 3-year high school held for the discretionary decision of the state board of education and the superintendent of public instruction. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Writ of mandamus will lie at the instance of a local board of school trustees to compel the state board of education to act on the question of accrediting a high school as a 3-year high school, if the required preliminary steps have been taken, but not to control its decision or discretion. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

943. County superintendents.

1936. Cited in State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

CHAPTER 92

COUNTY SUPERINTENDENT OF SCHOOLS

Section

975. Clerk and deputy—salaries.

975. Clerk and deputy — salaries. The county superintendent of counties having fifty or more teachers in third-class districts is authorized to appoint one clerk, and the county superintendent of counties having fewer than fifty teachers in third-class district may, with the permission of the county commis-

sioners, appoint a clerk at a salary to be fixed by the board of county commissioners.

The county commissioners of counties having not fewer than seventy-five public school teachers in districts of the third-class shall appoint one deputy, other than the clerk, for every seventy-five teachers in such districts from a list furnished by the county superintendent. Such deputy shall hold a Montana certificate not less in value than a professional grade certificate, and shall be paid a salary to be fixed by the county commissioners in an amount not to exceed eighty per cent (80%) of the salary of the county superintendent. [L. '39, Ch. 20, § 1, amending R. C. M. 1935, § 975. Approved and in effect February 14, 1939.

Section 2 repeals conflicting laws.

CHAPTER 93

SCHOOL TRUSTEES

Section

- 1002. Qualifications of electors.
- 1003. Challenges and oath of voters — false swearing—penalty.
- 1008. Power over property—repossession of land — owner's notice of intention — abandonment of land—electors to vote on.
- 1010A. Attendance of elementary school pupil at school outside of state.
- 1013. Transfer of apportionments.
- 1015. Powers and duties of trustees.
- 1015(23). School trustees—school rooms—permitting use for adult education.
- 1015(24). Certain school trustees—power to dispose of unneeded school property—procedure —resolution—meeting of elector—appeal to district court—procedure therein.

1002. Qualifications of electors. Every citizen of the United States, twenty-one years old, who has resided in the state of Montana for one year, and thirty days in the school district next preceding the election, and whose name appears on the tax rolls of the county of which that school district is situate, or whose wife or husband's name appears on the tax rolls of that county, or who is a parent, guardian or person having custody and control of any child then attending school in such district, or who will be eligible to attend such school during the term that the school officers then to be elected shall hold office, may vote thereat. [L. '39, Ch. 83, § 1, amending R. C. M. 1935, § 1002. Approved and in effect March 1, 1939.

Section 3 repeals conflicting laws.

1003. Challenges and oath of voters—false swearing — penalty. Any person offering to vote may be challenged by any elector of the

district, and the judges must thereupon administer to the person challenged an oath and affirmation in substance as follows: "You do solemnly swear, (or affirm) that you are a citizen of the United States; that you are twenty-one years of age; that you have resided in the state for one year, and in this school district thirty days next preceding this election, that your name or your wife or husband's name, appears upon the tax rolls of this county for the current year, or that you are the parent, guardian, or person having custody and control of a child now attending this school, or who will be eligible to attend this school during the term that the school officers then to be elected shall hold office, that you have not voted this day, so help you, God."

If he takes this oath or affirmation, his vote must be received, otherwise rejected. Any person who shall swear falsely before any judge of election shall be guilty of perjury, and punished accordingly. [L. '39, Ch. 83, § 2, amending R. C. M. 1935, § 1003. Approved and in effect March 1, 1939.

Section 3 repeals conflicting laws.

1008. Power over property—repossession of land — owner's notice of intention — abandonment of land — electors to vote on. The board of trustees of each school district shall have custody of all school property belonging to the district, and shall have power in the name of the district, or in their own names as trustees of the district, to convey by deed all the interest of their district in or to any school house or lot directed to be sold as hereinafter provided, and all conveyances of real estate made to the district or to the trustees thereof shall be made to the board of trustees of the district and to their successors in office; said board, in the name of the district, shall have power to transact all business necessary for maintaining schools and protecting the rights of the district; the trustees of the district shall have the power to lease any property belonging to the district which is not being used for school purposes.

Whenever, after the passage and approval of this act, a conditional deed has been issued to a school district for land or whenever land has been used at will or sufferance for a school site and there has been built upon such land a school house and other improvements, and said building and improvements cease to be used for the maintenance of a school in accordance with the provisions of section[s] 1014 and 1015, revised codes of Montana, 1935, as said section 1015 was amended by chapter 165 of the twenty-fifth legislative assembly, 1937, said board of trustees must be notified in writing by the owner or claimant of the land which has been so deeded or used by will or

sufferance for a school site that he intends to repossess the land and the school trustees shall, within a period of not exceeding one (1) year, remove the building and improvements placed thereon or they shall be deemed thereafter to have forfeited any further right to such property. Provided further that before the landowner or claimant to said land shall have the right to give the notice of removal aforesaid, the intent to abandon said land by the school district must have been expressed by the duly qualified electors in the school district in accordance with the provisions of subdivision eight (8) of section 1015, revised codes of Montana, 1935, as amended by chapter 165 of the twenty-fifth legislative assembly, 1937. [L. '39, Ch. 206, § 1, amending R. C. M. 1935, § 1008, as amended by L. '37, Ch. 186, § 1. Approved and in effect March 17, 1939.

Section 2 repeals conflicting laws.

1010. Transportation of pupils.

1938. When the board has exercised its discretion to close a school it must then exercise another discretion or power by determining whether it will provide the children with transportation or board and rent, and, in any circumstance, tuition at the other school selected by them. The courts cannot control the board's discretion, but can compel the exercise of it in a lawful manner. State ex rel. Lien v. School Dist. No. 73 of Stillwater County, 106 Mont. 223, 76 P. (2d) 330.

1938. While the court has no power to compel the board of trustees to exercise its discretion, in deciding whether it will send its pupils to another school, in any particular way, it may compel it to exercise the power conferred upon it by the law. State ex rel. Lien v. School Dist. No. 73 of Stillwater County, 106 Mont. 223, 76 P. (2d) 330.

1938. The first subdivision of section 1010 vests discretion in the board of school trustees to determine whether it will conduct a school in the district or send the children elsewhere, and when so exercised they are authorized to expend any money belonging to the district for the purpose of providing the pupils of the district with schooling in some other school in another district. State ex rel. Lien v. School Dist. No. 73 of Stillwater County, 106 Mont. 223, 76 P. (2d) 330.

1938. When the board of trustees determines to close a school it must then either furnish to the pupils residing in the district transportation to another school or provide board and rent. State ex rel. Lien v. School Dist. No. 73 of Stillwater County, 106 Mont. 223, 76 P. (2d) 330.

1938. The board of trustees, in contracting for the transportation of pupils to another school, or room and board under this particular statute, must either follow the schedule prescribed therein, or secure the approval of the county superintendent. State ex rel. Lien v. School Dist. No. 73 of Stillwater County, 106 Mont. 223, 76 P. (2d) 330.

1010A. Attendance of elementary school pupil at school outside of state. When the board of trustees of any school district shall deem it for the best interests of any pupil or

pupils residing in such school district to attend an elementary school in some school district in a county situated in another state, and which school district adjoins the school district in which such pupil or pupils reside, and written consent thereto has been given by the county superintendent of schools of the county in which such pupil or pupils reside in accordance with the provisions of section 1013, such board may expend any moneys belonging to their district for the purpose of either paying for the transportation of such pupil or pupils from their homes to the school in the district in the other state which is to be attended, or for board, rent or tuition for such pupil or pupils while actually attending such school, in the same manner and to the same extent as such money might be expended for transportation, board, rent or tuition of such pupil or pupils if permission were given for attending an elementary school in another school district in the county in which such pupil or pupils reside in accordance with the provisions of section 1010. [L. '39, Ch. 217, § 1, adding this section to chapter 93, R. C. M. 1935. Approved and in effect March 17, 1939.

Section 6 repeals conflicting laws.

1013. Transfer of apportionments. Children may attend elementary schools in districts in the county outside of the district in which they reside, or in a district in an adjoining county, or in a district in a county in another state when the district in such other state adjoins the district in which they reside, when written permission is secured from the board of trustees of the district in which they are to attend school and when written permission has been given by the county superintendent of schools of the county in which the children reside. All such permits shall expire at the end of the school year. When any child is given such written permission as herein provided to attend school in any school district the county superintendent shall immediately after giving such written permission, give the county treasurer written notice thereof, in which shall be stated the name of the child to whom such permission is given, the district in which the child resides and the district in which such child is to attend school under such permission, and the county treasurer shall, whenever any apportionments of school moneys are made in such county during the school year, transfer to the district in which such children are attending school under such permission all moneys due by apportionment to them. [L. '39, Ch. 217, § 2, amending R. C. M. 1935, § 1013. Approved and in effect March 17, 1939.

Section 6 repeals conflicting laws.

1015. Powers and duties of trustees. Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

1. To prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction for their own government of schools under their supervision.

2. To employ or discharge teachers, mechanics, or laborers, and to fix and order paid their wages; provided, that no teacher shall be employed except under resolution agreed to by a majority of the board of trustees at a special or regular meeting; nor unless such teacher be the holder of a legal teacher's certificate in full force and effect. All contracts of employment of teachers, authorized by proper resolution of a board of trustees, shall be in writing and executed in duplicate by the chairman and clerk of the board, for the district and by the teacher.

3. To determine the rate of tuition of non-resident pupils.

4. To fix the compensation of the clerk.

5. To enforce the rules and regulations of the superintendent of public instruction for the government of schools, pupils, and teachers and to enforce the course of study.

6. To provide for school furniture and for everything needed in the schoolhouse or for the use of the school board.

7. To repair and insure schoolhouses and to rent, lease and let to such persons or entities as the board may deem proper, the grade school halls, gymnasium and buildings and part thereof for such time and rental as the board may designate. All rentals shall be paid to the county treasurer for the credit of the school district.

8. To purchase, acquire, sell and dispose of plots or parcels of land to be used as sites for schoolhouses, school dormitories and other school buildings, and for other purposes in connection with the schools in the district; to build, purchase or otherwise acquire schoolhouses, school dormitories and other buildings necessary in the operation of schools of the district, and to sell and dispose of the same; provided, that they shall not build or remove schoolhouses or dormitories, nor purchase, sell or locate school sites unless directed so to do by a majority of the electors of the district voting at an election held in the district for that purpose, and such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers, and notice thereof shall be given by the clerk by posting three notices in three public places in the district at least ten days

prior to such election, which notices shall specify the time, place, and purpose of such election. Provided, further, that this subdivision shall not be so construed as to prevent the board of trustees from purchasing one or more options for a school site.

9. To hold in trust for their district all real or personal property for the benefit of the school thereof.

10. To suspend or expel pupils from school who refuse to obey the rules thereof, and to exclude from school, children under six years of age where the interest of the school requires such exclusion.

11. To provide clothing and medical aid for indigent children when it shall be made to appear that such aid is needed; and when deemed advisable to employ a physician or registered nurse to make inspections into the sanitary conditions of the school and the general health conditions of each pupil, and to make a full, detailed report to the board of trustees. The clerk of the district shall furnish immediately to each parent or guardian a copy of such portion of the above-mentioned report as pertains to his child or ward.

12. To require pupils to be furnished with suitable books as a condition of membership in school.

13. To exclude from school and school libraries all books, tracts, papers and other publications of immoral and pernicious nature.

14. To require teachers to conform to the law.

15. To make an annual report, as required by law, to the county superintendent on or before the first day of August in each year, in the manner and form and on the blanks prescribed and furnished by the superintendent of public instruction.

16. To make a report directly to the superintendent of public instruction whenever instructed by him to do so.

17. To determine what branches, if any, in addition to those required by law, shall be taught in any school in the district, subject to the approval of the county superintendent, in districts of the third class.

18. To visit every school in their district at least once in each term, and to examine carefully into its management, conditions, and needs. This clause applies to each of the trustees.

19. To provide separate privies or out-houses for the use of the sexes at all schoolhouses, where the same do not exist, and to see that the same are kept in good repair, and in a clean condition. Such privies or out-houses must be located and built in such

manner as to secure privacy. In all cases where there is no fence dividing the play yards of the sexes, the privies or outhouses herein named shall be separate and distinct buildings, and situated at least twenty feet apart, and to require that all teachers and janitors use due care in keeping all toilets in good repair and in clean condition and free from obscenity; provided, that any trustee or trustees, teacher, janitor, or janitors, failing to comply with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding ninety days, or both such fine and imprisonment in the discretion of the court.

20. To allow pupils residing in other districts to attend school in the district of which they have charge, if in their judgment there is sufficient room.

21. To procure, by purchase or donation, and to cause to be displayed daily in suitable weather, an American flag, with accompanying necessary fixtures, for each and every school-house in their respective districts. Said flags shall be of dimensions not less than four by six feet, and shall be made from durable material. The school trustees are hereby authorized and empowered to use such portion of the school funds as remain in their hands, and which is not otherwise appropriated, for the purchase and erection of fixtures.

22. To close school at their discretion during the annual session of the state teachers' association, and to allow teachers to attend the same without loss of salary. [L. '37, Ch. 165, § 1, amending R. C. M. 1935, § 1015. Approved and in effect March 16, 1937.

Section 2 repeals conflicting laws.

1936. The powers and duties vested in state board of education and the superintendent of public instruction, on the one hand, and the local board of school trustees, on the other, are supreme so long as each body acts within the law in its respective sphere and does nothing arbitrarily or capriciously. *State ex rel. School District No. 29, Flathead County v. Cooney*, 102 Mont. 521, 59 P. (2d) 48.

1015(23). School trustees—school rooms—permitting use for adult education. The board of trustees of any school district or of any county high school is authorized to permit the use of school rooms for adult education schools or classes for all adults sixteen years of age or over. [L. '37, Ch. 140, § 1. Approved and in effect March 16, 1937.

Section 2 repeals conflicting laws.

1015(24). Certain school trustees—power to dispose of unneeded school property—procedure — resolution — meeting of elector —

appeal to district court—procedure therein. The board of trustees of any school district, county high school, school districts maintaining a district high school or junior high school, and joint school districts, shall have the power to sell and dispose of or to exchange any lands, building, fixtures or other property of the district which has become or is about to become abandoned, obsolete, undesirable or unsuitable for school purposes of said district; provided, however, that before making any such sale or exchange the board shall duly pass a resolution declaring such lands, buildings, fixtures or other property to be or about to become abandoned, obsolete, undesirable or unsuitable for school purposes of said district, and providing for the sale and disposition or exchange thereof; provided further that notice of the meeting at which said resolution is to be considered for final adoption and of the proposed passage of said resolution shall be given as provided by law for notices of election of trustees, at which meeting the electors of said district shall have the right to be present and to protest the passage of said resolution. If at the hearing on such resolution protests against the adoption of the same shall be made and the board of trustees shall adopt the same over such protests, the resolution shall not become effective for five (5) days after the date of its adoption, during which time any taxpayer or taxpayers may appeal to the district court by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the clerk or secretary of the board of trustees. Said petition shall set forth in detail the objections of the petitioners to the adoption of such resolution or to the disposal of the property as provided for in said resolution. The service and filing of said petition shall operate to stay such resolution until final determination of the matter by the court. Upon the filing of such petition the court shall immediately fix a time for hearing the same which shall be at the earliest convenient time. At such hearing the court shall hear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination shall be final. The powers and authority granted by this act shall be in addition to the powers and authority granted in sections 1014, 1173, subdivision 2 of section 1262.83 and subdivision 8 of section 1015, as amended, of the revised codes of Montana, 1935. [L. '39, Ch. 106, § 1. Approved and in effect March 3, 1939.

Section 2 repeals conflicting laws.

1016. Letting contracts and furnishing supplies, trustees not to be interested in—advertising for bids required, when.

1938. ✓ Section 1016 does not prohibit a school board from contracting with one of its members for the transportation of pupils to another school selected by the board, or the provision of board and rent. State ex rel. Lien v. School Dist. No. 73 of Stillwater County, 106 Mont. 223, 76 P. (2d) 330.

1938. ✓ The board of trustees, in contracting for the transportation of pupils to another school, or room and board under this particular statute, must either follow the schedule prescribed therein, or secure the approval of the county superintendent. State ex rel. Lien v. School Dist. No. 73 of Stillwater County, 106 Mont. 223, 76 P. (2d) 330.

CHAPTER 94

BUDGET SYSTEM

1019.12. Approval and adoption of final budget—fixing of levies—taxpayers may be heard.

1939. ✓ Where joint district was formed by valid order the members of the boards of commissioners could be compelled by mandamus to proceed with the budget and tax levy procedure although the school year was far advanced. State ex rel. School District v. Lensman, Mont., 88 P. (2d) 63.

1019.19. Fixing tax levy.

1939. ✓ Where joint district was formed by valid order the members of the boards of commissioners could be compelled by mandamus to proceed with the budget and tax levy procedure although the school year was far advanced. State ex rel. School District v. Lensman, Mont., 88 P. (2d) 63.

1019.24. Budget supervisors and tax for joint school districts.

1939. ✓ Where order of county superintendents creating joint school district was not changed by county commissioners on appeal they should have acted on budget presented to them and levied tax to meet requirements of district budget. State ex rel. School District v. Lensman, Mont., 88 P. (2d) 63.

1939. ✓ Where joint district was formed by valid order the members of the boards of commissioners could be compelled by mandamus to proceed with the budget and tax levy procedure although the school year was far advanced. State ex rel. School District v. Lensman, Mont., 88 P. (2d) 63.

CHAPTER 95

SCHOOL DISTRICTS

1024. Creation in consolidating or changing boundaries of districts.

1939. ✓ Proceedings for the formation of a joint school district were held not invalidated by a misdescription of the boundaries of the district where the petition for organization clearly showed what lands were to be included. State ex rel. School District v. Lensman, Mont., 88 P. (2d) 63.

1939. ✓ Appeal lies to county commissioners of both

counties where a joint school district lying partly in such counties is created. State ex rel. School District v. Lensman, Mont., 88 P. (2d) 63.

1939. ✓ A petition for the creation of a school district is not a pleading, and its sufficiency is not to be tested by subjecting its contents to analysis by the trained legal mind searching for, or bent on discovering, defects; nor are its averments to be construed against those who have signed it. State ex rel. School District v. Lensman, Mont., 88 P. (2d) 63.

1939. ✓ The legislature may bestow on county superintendents and commissioners a measure of discretion as to the creation of school districts. State ex rel. School District v. Lensman, Mont., 88 P. (2d) 63.

1939. ✓ In hearing by county superintendents of petition to form joint school district, the reception of evidence, though proper, is not indispensable where the facts are shown by some other means. State ex rel. School District v. Lensman, Mont., 88 P. (2d) 63.

1939. ✓ In passing on a petition for the creation of a school district the county commissioners may avail themselves of any source of information, including their own personal knowledge. State ex rel. School District v. Lensman, Mont., 88 P. (2d) 63.

1939. ✓ Where respective boards of county commissioners were equally divided on appeal from order creating joint district, the order should have been affirmed. State ex rel. School District, Mont., 88 P. (2d) 63.

1939. ✓ Though petition for the creation of a joint school district misdescribed lands to be included therein, it was held sufficient. State ex rel. School District v. Lensman, Mont., 88 P. (2d) 63.

1034. Consolidated districts — procedure in event of consolidation — bonded debts.

1936. ✓ Question as to the right of petitioners to vote in school elections not raised in former suit, although it could have been raised, held not res judicata of the issue raised in subsequent suit, but all issues involved and decided in the former suit were res judicata, including the question whether an injunction suit was properly brought under this section. Swaim v. Redeen, 101 Mont. 521, 55 P. (2d) 1.

1936. ✓ Where the superintendent was restrained by the court from issuing the order of consolidation after a favorable vote on the consolidation of school districts, he had jurisdiction to do so after restraining order was annulled; and could be compelled to do so by mandamus, though the statutory time for so doing had elapsed. Swaim v. Redeen, 101 Mont. 521, 55 P. (2d) 1.

1936. ✓ A freeholder not of record is not entitled to be taken into account in determining whether a petition for election on consolidation of school districts contains the requisite number of signers, and such petition is not to be considered as a pleading in an injunction suit to prevent such consolidation, nor is it to be tested in the manner of testing a pleading. Swaim v. Redeen, 101 Mont. 521, 55 P. (2d) 1, holding, further, that such petition need not be held insufficient because every jurisdictional fact does not affirmatively appear in it.

1936. ✓ The number of freeholders in a school district is determined by the registration of deeds in the county records, beyond which the superintendent of a school district need not go in determining whether a petition for consolidation of schools districts has

the required number of signers, the-verified petition being prima facie evidence of that fact. *Swaim v. Redeen*, 101 Mont. 521, 55 P. (2d) 1.

1936. ✓ The superintendent acquires jurisdiction of proceedings to consolidate school districts when the petition for an election to decide the matter is filed with him, and the validity of the petition containing signatures of a majority of the freeholders is not altered by the fact that after the making of the order calling the election or directing that notices of the election be posted, deeds filed for record so increased the number of freeholders that a majority of the then freeholders were not represented as signers of the petition, although the deeds were dated prior to the filing of the petition. *Swaim v. Redeen*, 101 Mont. 521, 55 P. (2d) 1.

1936. ✓ The superintendent may post notices of election at any time within the ten days specified in the statute, and if he fails to do so within that time he may be compelled to do so by mandamus, but not before the expiration of such time. *Swaim v. Redeen*, 101 Mont. 521, 55 P. (2d) 1.

1936. ✓ The statutory command that the superintendent cause notices of election to be posted within ten days after the petition is filed means that the ten days is the time allowed a superintendent in which to act voluntarily, and not a limitation on the time within which the election notices may be posted. *Swaim v. Redeen*, 101 Mont. 521, 55 P. (2d) 1.

1035. Joint districts—formation, control, discontinuance.

1939. ✓ Though petition for the creation of a joint school district misdescribed lands to be included therein, it was held sufficient. *State ex rel. School District v. Lensman*, Mont., 88 P. (2d) 63.

1939. ✓ In legal effect, county commissioners vested with appellate power in the matter of the creation of joint school districts constitute a special statutory board, vested with certain powers extrajurisdictional in nature and entirely distinct from the powers such boards ordinarily exercise, and as separate therefrom as though the personnel of the board were composed of persons having no other part in county affairs, hence statutory regulation of county boards have no application in the matter of above-mentioned appeals unless they relate to joint school districts. *State ex rel. School District*, Mont., 88 P. (2d) 63.

1939. ✓ In passing on a petition for the creation of a school district the county commissioners may avail themselves of any source of information, including their own personal knowledge. *State ex rel. School District v. Lensman*, Mont., 88 P. (2d) 63.

1939. ✓ In hearing by county superintendents of petition to form joint school district, the reception of evidence, though proper, is not indispensable where the facts are shown by some other means. *State ex rel. School District v. Lensman*, Mont., 88 P. (2d) 63.

1939. ✓ One who is not injured thereby cannot complain that the action of respective county boards of commissioners was joint instead of concurrent where there was no difference in the results. *State ex rel. School District v. Lensman*, Mont., 88 P. (2d) 63.

1939. ✓ Where respective boards of county commissioners were equally divided on appeal from order creating joint district, the order should have been affirmed. *State ex rel. School District*, Mont., 88 P. (2d) 63.

1939. ✓ Where joint district was formed by valid order the members of the boards of commissioners could be compelled by mandamus to proceed with the budget and tax levy procedure although the school year was far advanced. *State ex rel. School District v. Lensman*, Mont., 88 P. (2d) 63.

1939. ✓ Appeal lies to county commissioners of both counties where a joint school district lying partly in such counties is created. *State ex rel. School District v. Lensman*, Mont., 88 P. (2d) 63.

1939. ✓ A petition for the creation of a school district is not a pleading, and its sufficiency is not to be tested by subjecting its contents to analysis by the trained legal mind searching for, or bent on discovering, defects; nor are its averments to be construed against those who have signed it. *State ex rel. School District v. Lensman*, Mont., 88 P. (2d) 63.

1939. ✓ Proceedings for the formation of a joint school district were held not invalidated by a misdescription of the boundaries of the district where the petition for organization clearly showed what lands were to be included. *State ex rel. School District v. Lensman*, Mont., 88 P. (2d) 63.

1939. ✓ A joint school district is one that lies partly in two counties, and all things necessary to be done in the establishment of an ordinary school district must be done in such case by concurrent action of county superintendents of both counties, and petition must be addressed to both superintendents. *State ex rel. School District v. Lensman*, Mont., 88 P. (2d) 63.

1036.1. Determination of levy in joint school districts.

1939. ✓ Where order of county superintendents creating joint school district was not changed by county commissioners on appeal they should have acted on budget presented to them and levied tax to meet requirements of district budget. *State ex rel. School District*, Mont., 88 P. (2d) 63.

1036.2. Levy of tax in joint school districts.

1939. ✓ Where order of county superintendents creating joint school district was not changed by county commissioners on appeal they should have acted on budget presented to them and levied tax to meet requirements of district budget. *State ex rel. School District*, Mont., 88 P. (2d) 63.

CHAPTER 96

RURAL SCHOOL DISTRICTS

1044. Powers and duties of trustees—budget—taxes. *Repealed*

1938. This section must be read in connection with section 1075. *Moses v. School District No. 53 of Lincoln County*, 107 Mont. 300, 86 P. (2d) 407.

CHAPTER 98

GRADES AND COURSES OF STUDY IN PUBLIC SCHOOLS

Section

1054. Courses of study in public schools.

1054. Courses of study in public schools. All public schools shall be taught in the Eng-

lish language, and instruction shall be given in the following branches, viz.: Reading, penmanship, written arithmetic, mental arithmetic, orthography, geography, English grammar, physiology and hygiene, with special reference to the effect of alcoholic stimulants and narcotics on the human system, civics (state and federal), United States history, the history of Montana, music, art, elementary agriculture including cooperative economics. [L. '37, Ch. 158, § 1, amending R. C. M. 1935, § 1054. Approved and in effect March 16, 1937.

Section 2 repeals conflicting laws.

CHAPTER 99

SCHOOL DAY, MONTH, AND YEAR—HOLIDAYS—PIONEER AND ARBOR DAY—CONSTITUTION DAY

Section

- 1070.1. Constitution day—designation.
1070.2. Same—how observed.

1070.1. Constitution day — designation. That the 17th day of September of each year be designated and known as "Constitution Day" in the state of Montana. [L. '37, Ch. 194, § 1. Approved and in effect March 18, 1937.

1070.2. Same — how observed. That all public schools and high schools within the state shall observe "Constitution Day" by conducting appropriate exercises in commemoration thereof under the direction of the superintendent of public instruction. [L. '37, Ch. 194, § 2. Approved and in effect March 18, 1937.

Section 3 repeals conflicting laws.

CHAPTER 101

TEACHERS—POWERS AND DUTIES

1075. Re-election of teachers — when automatic — acceptance.

1938. This section must be read in connection with section 1044. *Moses v. School District No. 53 of Lincoln County*, 107 Mont. 300, 86 P. (2d) 407. 1938. The automatic re-election under this section, by failure of the trustees to give notice that the teacher's services will not be required for the ensuing year, does not entitle her to salary or employment for the following year where the board notified her in August that the school would not be opened and her services would not be required, where her previous employment contract reserved the right of the trustees to close the school for lack of attendance, in accordance with the provisions of section 1044. *Moses v. School District No. 53 of Lincoln County*, 107 Mont. 300, 86 P. (2d) 407.

CHAPTER 104

TEACHERS' RETIREMENT SALARY FUND

Section

- 1113-1132. Retirement system discontinued.

1113-1132. Retirement system discontinued. The retirement system established under these sections was discontinued by L. '37, Ch. 87, § 21 [1132.12], approved and in effect March 10, 1937.

CHAPTER 104A

RETIREMENT SYSTEM FOR PUBLIC SCHOOL TEACHERS

Section

- 1132.1. Definitions.
1132.2. Name and date of establishment—board—powers.
1132.3. Administration—retirement board—personnel—appointment—teacher members—terms—vacancies—oath—quorum—compensation—chairman—secretary—employees—records—reports—publication—legal adviser—medical board—actuary—mortality tables—rates—adoption—investigations—funds.
1132.4. Membership—teachers in public elementary and high schools—teachers in university of Montana—persons entering or re-entering teaching service—teachers who previously elected not to become members—matters in discretion of retirement board—when membership ceases—statements to be submitted by school trustees and executives of divisions of university.
1132.5. Membership application and creditable service—member to file application with retirement board—credit for prior service to teachers in the university—computation of service and average compensation—verification of statement submitted—prior service certificate—service as basis of retirement allowance.
1132.6. Benefits—superannuation retirement—who may retire—application—involuntary retirement age—superannuation allowance—annuity—pension—additional—disability retirement—allowance—pension—medical examination—re-examination—pension reduced by amount earnable—restoration to service—subsequent retirement—return of contributions—optional benefits.
1132.6a. Benefits—university of Montana teachers—when entitled to.
1132.7. Management of funds—investment—interest—state to supplement—custodian—state treasurer—vouchers—board not to profit from—as surety.
1132.8. Method of financing—funds created—annuity savings—annuity reserve—pension accumulation—pension reserve—expense.
1132.9. Duties of employer—records and information—inform teacher of system—certify teachers' names to board—monthly reports of changes.

Section

- 1132.10. Collection of contributions by members—employer to deduct—monthly remittance—board may modify method of collection.
- 1132.11. Contribution by state—liquor control board receipts—appropriation from.
- 1132.12. Discontinuance of former retirement system—transfer of assets—existing retirement salaries—fund payable from—persons retired under former system—adjustments—actuary's duties—state deficiency contribution—conditions for increase—refunding excess to contributors.
- 1132.13. Benefits—exemption from taxation, execution, and garnishment—assignment.
- 1132.14. Protection against fraud—penalty—errors—correction.
- 1132.15. Limitation on membership.
- 1132.16. Guarantee by state.
- 1132.17. Constitutionality—partial invalidity saving clause.
- 1132.18. Effective date of act.
- 1132.19. Conflicting laws repealed.

1132.1. Definitions. The following words and phrases used in this act shall have the following meanings unless a different meaning is plainly required by the content:

(1) "Retirement system" shall mean the teacher's retirement system of the state of Montana provided for in section 2 [1132.2] of this act.

(2) "Retirement board" shall mean the retirement board provided by section 3 [1132.3] of this act to administer the retirement system.

(3) "Employer" shall mean the state of Montana or the board of trustees of any school district employing teachers subject to the provisions of this act; or other agency of and within the state by which the teacher is paid.

(4) "Teacher" shall mean any teacher in the public elementary and high schools of the state, and the university of Montana, as constituted in accordance with section 852, revised codes of Montana, 1935, including all kindergarten teachers in the public schools, and shall include any school librarian or physical training teacher, principal, vice principal, supervisor, superintendent, county superintendent of schools, and any other member of the teaching or professional staff of any public elementary or high school of this state, and any administrative officer or member of the instructional or scientific staff of the university of Montana; provided that no person shall be deemed a teacher within the meaning of this act who is not so employed for full time outside vacation periods. The word "teacher" shall also include any person employed in the office of or by the superintendent of public instruction in the performance of duties pertaining to instructional services. In all cases

of doubt, the retirement board shall determine whether any person is a teacher as defined in this act.

(5) "Member" shall mean any person included in the membership of the system as provided in section 4 [1132.4] of this act.

(6) "Service" shall mean service as a teacher as described in subsection (4) of this section and paid for by an employer as described in subsection (3) of this section.

(7) "Prior service" shall mean service as a "teacher", or in a similar capacity outside of the state, rendered prior to the date of establishment of the system, and in the case of teachers in the university of Montana rendered prior to September 1, 1939, for which credit is allowable as provided in section 5 [1132.5] of this act.

(8) "Membership service" shall mean service as a teacher rendered while a member of the retirement system.

(9) "Creditable service" shall mean prior service plus membership as provided in section 5 of chapter 87, laws of Montana, 1937, as amended by this act and designated herein as section 3 [1132.3].

(10) "Beneficiary" shall mean any person in receipt of a pension, annuity, a retirement allowance, or other benefit as provided by this act.

(11) "Regular interest" shall mean interest at four per centum per annum compounded annually, or at such other rate as may be set by the retirement board in accordance with subsection (2) of section 7 [1132.7] of this act.

(12) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member or paid by a member as provided for in subsection (2) of section 5 of chapter 87, laws of Montana, 1937, as amended by this act and designated herein as section 3 [1132.3], and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed on such total or part thereof when used to provide a benefit at the time of retirement. Interest at the rate of three-fourths the regular rate shall be computed and paid on such total amounts or part thereof when withdrawn for any other purpose.

(13) "Earnable compensation" shall mean the full rate of the compensation, pay or salary that would be payable to a teacher if he worked the full normal working time except that any compensation in excess of two thousand dollars (\$2,000) per annum shall be used as two thousand dollars (\$2,000) for the purpose of this system. In cases where compensation includes maintenance, the retire-

ment board shall fix the value of that part of the compensation not paid in money.

(14) "Average final compensation" shall mean the average annual compensation, pay or salary earnable by a member during his last ten years of service as a teacher.

(15) "Medical board" shall mean the board of physicians provided for in section 3 [1132.3] of this act.

(16) "Annuity" shall mean payments for life derived from the accumulated contributions of a member as provided in this act. All annuities shall be paid in equal monthly installments.

(17) "Pensions" shall mean payments for life derived from money provided by the employer as defined in this act. All pensions shall be paid in equal monthly installments.

(18) "Retirement allowance" shall mean the annuity plus the pension.

(19) "Annuity reserve" shall mean the present value of all payments to be made on account of a member's annuity granted under the provisions of this act, computed upon the basis of such mortality tables as shall be adopted by the retirement board and regular interest.

(20) "Pension reserve" shall mean the present value of all payments to be made on account of a pension granted under the provisions of this act, computed on the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

(21) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the retirement board and regular interest.

(22) "Former retirement system" shall mean the retirement system established under sections 1113 to 1132 inclusive, of the revised codes of Montana, 1935. [L. '39, Ch. 215, § 1, amending L. '39, Ch. 202, § 1, amending L. '37, Ch. 87, § 1 [1132.1]. Approved and in effect March 17, 1939.]

Section 6 repeals conflicting laws.

1132.2. Name and date of establishment—board—powers. A state teachers' retirement system is hereby established for the teachers of the state of Montana, and placed under the management of a "retirement board" for the payment of retirement allowances and other benefits under the provisions of this act. The retirement system herein created shall have such powers and privileges of a corporation as may be necessary to carry into effect the provisions of this act. The retirement system so created shall begin operation as of the first day of September, 1937, except that

the state's contribution to the pension accumulation fund shall begin with the fiscal year, July 1, 1937; and such system shall be known as "The Teachers' Retirement System of the state of Montana", and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held in trust for the purpose for which received. [L. '37, Ch. 87, § 2. Approved March 10, 1937.]

1132.3. Administration—retirement board—personnel—appointment—teacher members—terms—vacancies—oath—quorum—compensation—chairman—secretary—employees—records—reports—publication—legal adviser—medical board—actuary—mortality tables—rates—adoption—investigations—funds. (1) The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of this act are hereby vested in a retirement board. Subject to the limitations of this act the retirement board shall from time to time establish rules and regulations for the administration and transaction of the business of the retirement system and shall perform such other functions as are required for the execution of this act. The membership of the retirement board shall consist of five persons as follows:

(a) The superintendent of public instruction.

(b) The state treasurer.

(c) The attorney general.

(d) Two other members known as teacher members who shall be members of the retirement system and who shall be appointed by the state board of education as hereinafter provided.

(2) At the first regular meeting of the state board of education following September 1, 1937, the state board of education shall appoint and designate two qualified teacher members of the retirement board, one of whom shall be designated to serve for one year, and the other for two years from the date of such appointment. Annually thereafter the said state board of education shall appoint one teacher member of said retirement board to succeed the teacher member whose term expires on such date, and each person so appointed shall hold said office for the period of two years from date of his appointment or until his successor shall be appointed and qualified. Until the first appointment of such teacher members shall have been made and the teacher members appointed duly installed, the ex-officio members of the retirement board shall constitute an acting retirement board.

(3) If a vacancy occurs in the office of a teacher member of said board, the vacancy may be filled until the next regular meeting of the state board of education by the remaining members of the retirement board, and at said next regular meeting of the state board of education said vacancy shall be filled by the said state board of education for the unexpired term.

(4) If a vacancy occurs in the office of an ex-officio member of the board the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(5) Each member of the retirement board created by this act shall take and subscribe the oath prescribed by article XIX, section 1 of the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state.

(6) A majority of the members of the retirement board shall constitute a quorum for the transaction of any business.

(7) The members of the retirement board shall serve without compensation except that the teacher members thereof shall receive a per diem fee of ten dollars each for each day in actual attendance at the meetings of said board or in the execution of their duties as members of said board; provided, however, that in no instance shall any such member of said board receive as said per diem fee, a sum in excess of one hundred dollars in any one year; and the members of said board shall be allowed their actual and necessary traveling expenses while performing their duties as members of said board, which shall be paid quarterly upon proper vouchers from the expense fund hereinafter named.

(8) The retirement board shall elect from its membership a chairman, and shall appoint a secretary who may be, but need not be one of its members. The secretary shall give bond in such amount and with such sureties as the board may require.

(9) The retirement board shall have power to employ and to secure the services of such technical and administrative employees as may be necessary for the transaction of the business of the retirement system. The compensation of all persons engaged by the retirement board shall be fixed by the board and all other expenses of the board necessary for the proper operation of the retirement system shall be paid at such rates and in such amounts as the retirement board shall approve.

(10) The retirement board shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the system. It shall keep a

record of all of its proceedings which shall be open to public inspection. It shall publish biennially on or before the first day of January wherein the legislative assembly shall meet a report showing in detail the fiscal transactions of the retirement board for the two years ending on the preceding thirtieth day of June, the amount of the accumulated cash and securities of the system and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system. The board shall submit said report to the governor and shall furnish copies thereof to the heads of the various departments and to the legislative assembly.

Legal Adviser

(11) The attorney general of the state of Montana shall be the legal adviser of the retirement board.

Medical Board

(12) The retirement board may designate a medical board to be composed of three physicians not eligible to participate in the retirement system. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this act, shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the retirement board its conclusions and recommendations upon all the matters referred to it.

Actuary

(13) The retirement board shall designate an actuary who shall be the technical adviser of the retirement board on matters regarding the operation of the funds created by the provisions of this act and shall perform such other duties as are required in connection therewith.

(14) As soon after the establishment of the system as the board may deem it necessary, the board with the assistance of its actuary shall make such investigation of the mortality, service and compensation, experience of the members of the system as he shall recommend and the retirement board shall authorize, for the purpose of determining upon the proper mortality and service tables to be prepared and submitted to the retirement board for adoption. On the basis of such investigation the said retirement board shall adopt such tables and such rates as are required by section 8 [1132.8] of this act.

(15) It shall be the duty of the retirement board to adopt for the retirement system such mortality, service or other tables as shall be deemed necessary and to certify such rates of contribution as are payable by the state as hereinafter provided. As an aid to the board in certifying the annual rates of payment to be made by the state under the provisions of this act the board shall have prepared by an actuary an annual valuation of the assets and liabilities of the funds of the system. In the year 1940 and at least once in each five year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the result of such investigation and valuation the board shall modify such mortality, service and other tables and shall fix and determine rates of contribution payable on account of members by the state under the provisions of this act, and said board shall have the power and authority at any time the same may be found necessary to readjust and redetermine such rates of contribution to the end that the retirement system shall be kept at all times upon a sound financial and actuarial basis, and that the contributions shall be the actuarial equivalent of the benefits provided and paid. [L. '37, Ch. 87, § 3. Approved March 10, 1937.]

1132.4. Membership — teachers in public elementary and high schools — teachers in university of Montana — persons entering or re-entering teaching service — teachers who previously elected not to become members — matters in discretion of retirement board — when membership ceases — statements to be submitted by school trustees and executives of divisions of university. (1) The membership of the retirement system shall consist of the following:

(a) All persons who were teachers in the public elementary and high schools of the state during the school year nineteen hundred and thirty-six to nineteen hundred and thirty-seven, and who continue to be teachers shall become members as of the date of establishment except that any such teacher may notify the board on or before the thirtieth day of November, nineteen hundred and thirty-seven, in such form as the board may prescribe, that he does not desire to become a member, and in such case the board shall exclude him from the membership.

(b) All persons who were teachers in the university of Montana during the school year nineteen hundred and thirty-eight to nineteen

hundred and thirty-nine, and who continue to be teachers shall become members as of the first day of September nineteen hundred and thirty-nine, except that any such teacher may notify the board on or before the thirtieth day of November, nineteen hundred and thirty-nine in such form as the board may prescribe, that he does not desire to become a member, and in such case the board shall exclude him from the membership.

(c) All persons who become teachers or re-enter the teaching service in the public elementary or high schools on or after the first day of September, nineteen hundred and thirty-seven, and all persons who become teachers or re-enter the teaching service in the university of Montana on or after the first day of September, nineteen hundred and thirty-nine, shall become members of the retirement system by virtue of their appointment as teachers.

(d) A teacher in the public elementary or high schools who shall elect not to become a member as provided in subdivision (a) of this subsection, may thereafter apply for and be admitted to membership, but no such teacher shall receive prior service credit unless he becomes a member before the first day of September, nineteen hundred and thirty-eight.

(e) A teacher in the university of Montana who shall elect not to become a member as provided in subdivision (b) of this subsection may thereafter apply for and be admitted to membership, but no such teacher shall receive prior service credit unless he becomes a member before the first day of September, nineteen hundred and forty.

(2) The retirement board may in its discretion deny the right to become members to any class of teachers whose compensation is only partly paid by the employer, or who are serving on a temporary or any other than a per annum basis, and it may also in its discretion make optional with members in any such class their individual entrance into membership.

(3) The membership of any person in the retirement system shall cease if he shall be continuously absent without pay for a period of more than three years or if in any period of ten consecutive years after he last became a member he shall render less than five years of services as a teacher or if he withdraws his accumulated contributions or retires on a pension or dies, but not otherwise, except that the membership of a teacher who has not withdrawn his contributions and who has not had sufficient service to be eligible for disability retirement shall not be cancelled, provided the member shall prove to the satisfaction of the retirement board that absence from

service was caused by personal illness constituting disability.

(4) It shall be the duty of each board of school trustees and of the chief executive of each institution, station or division of the University of Montana employing teachers subject to the provisions of this act to submit to the retirement board a statement showing the name, title, compensation, duties, date of birth, and length of service of each teacher employed in such schools and such other information regarding such teachers as the retirement board may require. [L. '39, Ch. 215, § 2, amending L. '37, Ch. 87, § 4. Approved and in effect March 17, 1939.]

Section 6 repeals conflicting laws.

1132.5. Membership application and creditable service — member to file application with retirement board — credit for prior service to teachers in the university — computation of service and average compensation — verification of statement submitted — prior service certificate — service as basis of retirement allowance. (1) Under such rules and regulations as the retirement board shall adopt, each teacher upon becoming a member shall file with the retirement board an application showing his date of birth, and such other necessary information as the retirement board may require for the proper operation of the retirement system. If a member was a teacher in the public elementary or the high schools during the school year immediately preceding the establishment of the retirement system, and becomes a member before the first day of September, nineteen hundred and thirty-eight, and if a member was a teacher in the university of Montana during the school year nineteen hundred and thirty-eight to nineteen hundred and thirty-nine, and becomes a member before the first day of September, nineteen hundred and forty, he shall itemize on such application all services as a teacher rendered prior to the date of establishment, including service in a similar capacity in other states rendered by him prior to the first day of September, nineteen hundred and thirty-seven, for which he claims credit.

(2) Any member who was a teacher in the university of Montana during the school year nineteen hundred and thirty-eight to nineteen hundred thirty-nine and becomes a member before the first day of September, nineteen hundred and forty, shall be allowed upon application to the retirement board, credit for prior service for either the school year nineteen hundred and thirty-seven to nineteen hundred thirty-eight, or the school year nineteen hundred and thirty-eight to nineteen hundred and thirty-nine, or for both of these

years, provided (a) that he make application to the retirement board prior to the first day of September, nineteen hundred and forty; and (b) that he was a teacher in the university of Montana during the school year or years for which he makes application for such credit; and (c) that he contributes to the retirement fund an amount equal to the contribution that would have been necessary if he had been a member during the school year or years for which he makes application for such credit; and (d) that he completes the payment of such contribution before the first day of September, nineteen hundred and forty-one. The amount contributed by a member in accordance with this subsection shall be credited to his individual accounts in the annuity savings fund.

(3) The retirement board shall fix and determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in computing such service or in computing average compensation, it shall credit no period of more than a month's duration, during which a member was absent without pay, nor shall more than one year of service be credited for all service in any school year.

(4) Subject to the above restrictions and to such other rules and regulations as the retirement board shall adopt, said board shall verify as soon as practicable the statement of service submitted.

(5) Upon verification of the statement of service submitted, the retirement board shall issue to each member who was a teacher in the public elementary or the high schools during the school year immediately preceding the date of establishment of the retirement system and becomes a member before the first day of September, nineteen hundred and thirty-eight, and to each member who was a teacher in the university of Montana during the school year nineteen hundred and thirty-eight to nineteen hundred and thirty-nine, and becomes a member before the first day of September, nineteen hundred and forty, a prior service certificate certifying to the aggregate length of prior service as a teacher and to the aggregate length of such service in a similar capacity outside of the state for which the member is entitled to credit. In such prior service certificate, the member shall be credited up to the nearest number of years and months with all service as a teacher prior to September 1, 1937, and with all service not exceeding ten years in a similar capacity in other states, and with all service for which credit is allowable as provided in subsection (2) of this section.

(6) So long as membership continues, a prior service certificate shall be final and conclusive for retirement purposes as to such service unless thereafter modified by the retirement board upon application made by the member within one year after the date of issuance or modification of a prior service certificate or upon the discovery by the retirement board of an error or fraud. When membership ceases such certificate shall be void. Should membership be resumed by the teacher, such teacher shall enter the system as a teacher not entitled to prior service credit, except as provided by subdivision (7) of section 6 of this act [1132.6].

(7) At retirement the creditable service of a member on which his retirement allowance shall be based, shall consist of the membership service rendered by him since he last became a member and also if he has a prior service certificate, which is in full force and effect, the service certified on his prior service certificate. [L. '39, Ch. 215, § 3, amending L. '37, Ch. 87, § 5 [1132.5]. Approved and in effect March 17, 1939]

Section 6 repeals conflicting laws.

1132.6. Benefits—superannuation retirement—who may retire—application—involuntary retirement age—superannuation allowance—annuity—pension—additional—disability retirement—allowance—pension—medical examination—re-examination—pension reduced by amount earnable—restoration to service—subsequent retirement—return of contributions—optional benefits. (1) (a) Any member in service who has completed fifteen years of creditable service, the last ten years of which shall have been in this state, and who has attained the age of sixty may retire from service, if he files with the retirement board his written application setting forth at what date, not less than thirty nor more than ninety days subsequent to the filing thereof, he desires such retirement and notwithstanding that during such period of notification, he may have separated from service.

(b) After the first day of September, nineteen hundred and forty-two, any member in service who has attained the age of seventy years shall be retired forthwith or on the first day of the calendar month next succeeding that in which the said member shall have attained the age of seventy years.

Allowance on Superannuation Retirement

(2) Upon superannuation retirement a member shall receive a superannuation retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement, and

(b) A pension of one-quarter of his average final compensation provided his creditable service is at least thirty-five years, otherwise, a pension of one one-hundred and fortieth (1/140) of his average final compensation multiplied by the number of years of his creditable service, and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to one one-hundred and fortieth (1/140) of his average final compensation multiplied by the number of years of service certified to him on his prior service certificate.

Disability Retirement Benefit

(3) Upon the application of a member in service or of his employer, any member who has had ten or more years of creditable service in the state of Montana may be retired by the retirement board not less than thirty and not more than ninety days next following the date of filing such application on a disability retirement allowance, provided that the medical board after a medical examination of such member shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

Allowance on Disability Retirement

(4) Upon retirement for disability a member shall receive a superannuation allowance if he is eligible for a superannuation allowance; otherwise he shall receive a disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement, and

(b) A pension which, together with his annuity, shall provide a total retirement allowance equal to ninety per centum of one-seventieth of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-quarter of his average final compensation; otherwise; a pension which, together with his annuity, shall provide a total retirement allowance equal to one-quarter of his average final compensation, provided, however, that no such allowance shall exceed ninety per centum of one-seventieth of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.

Re-Examination of Beneficiaries Retired on Account of Disability

(5) Once each year during the first five years following the retirement of a member on disability retirement allowance, and once in every three year period thereafter the retirement board may, and upon his application shall, require a disability beneficiary who has not yet attained the age of sixty to undergo a medical examination by the medical board or a physician or physicians designated by the medical board, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon. Should any disability beneficiary who has not yet attained the age of sixty refuse to submit to at least one medical examination in any year by the medical board or a physician or physicians designated by the medical board, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the retirement board.

(6) Should the medical board report and certify to the retirement board that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and should the retirement board concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed the amount of his pension may be further modified; provided that the new pension shall not exceed the amount of the pension originally granted, nor an amount which when added to the amount earnable by the beneficiary, together with his annuity equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired shall not become a member of the retirement system while receiving a reduced benefit.

(7) Should a disability beneficiary under age sixty be restored to active service at a compensation not less than his average final compensation his retirement allowance shall cease; he shall again become a member of the retirement system and contribute thereto. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect and in addition upon his subsequent retirement he shall be credited with all his service as a member, and should he be restored

to active service on or after the attainment of the age of fifty-five years, his pension upon subsequent retirement shall not exceed the pension that he would have received had he remained in service during the period of his previous retirement nor the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new entrant.

Return of Contributions

(8) (a) A member who withdraws from service or ceases to be a teacher for any cause other than death or retirement shall be paid such part of the accumulated contributions standing to the credit of his individual account in the annuity savings fund as he shall demand.

(b) Should a member die before retirement the amount of the accumulated contributions standing to the credit of his individual account in the annuity savings fund shall be paid to his estate or to such person as he shall have nominated by written designation duly executed and filed with the retirement board.

Optional Benefits

(9) With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, and that such a beneficiary shall be considered as an active member at the time of his death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement allowance payable throughout life as hereinabove provided, or he may on retirement elect to receive the actuarial equivalent at that time of his retirements allowance in a lesser retirement allowance payable throughout life with the provision that:

Option 1. If he dies before he has received in payments of his annuity the amount of his accumulated contributions as they were at the time of his retirement, the balance shall be paid to his legal representative or to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board, or

Option 2. Upon his death, his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement; or

Option 3. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation

nation duly acknowledged and filed with the retirement board at the time of his retirement; or

Option 4. Some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement, provided such other benefit or benefits, together with the lesser retirement allowance shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance and shall be approved by the retirement board. [L. '37, Ch. 87, § 6. Approved March 10, 1937.

1132.6a. Benefits—university of Montana teachers—when entitled to. Members who are teachers in the university of Montana shall not be entitled to the benefits as provided for in section 6, chapter 87 [1132.6] of the laws of the twenty-fifth legislative assembly of the state of Montana, prior to July 1, 1941; but shall be entitled to such benefits thereafter. [L. '39, Ch. 215, § 4, adding this section to chapter 104A. Approved and in effect March 17, 1939.

Section 6 repeals conflicting laws.

1132.7. Management of funds—investment—interest—state to supplement—custodian—state treasurer—vouchers—board not to profit from—as surety. (1) The retirement board shall be the trustees of the several funds created by this act and shall have cause to be invested and reinvested all of the funds subject to investment as part of the Montana trust and legacy fund.

(2) The retirement board annually shall allow regular interest on the average amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds and shall be annually credited thereto by the retirement board from interest and other earnings on the moneys of the retirement system. Any additional amount required to meet the interest on the funds of the retirement system shall be paid by the state during the ensuing year and any excess of earning over such amount required shall be deductible from the amounts to be contributed by the state during the ensuing year. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the retirement board on the basis of the interest earnings of the system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future.

(3) The state treasurer shall be the custodian of the several trust funds and of the securities in which said funds are invested. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the retirement board. A duly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it has previously been authorized by resolution of the retirement board.

(4) Except as herein provided no member of the retirement board and no employee of the board shall have an interest, direct or indirect, in the gains or profits of any investment made by the retirement board, nor as a member of the board directly or indirectly, receive any pay or emolument for his services. No member of the said board or employee thereof shall directly or indirectly for himself or as an agent in any manner use the funds or deposits of the retirement system except to make such current and necessary payments as are authorized by the retirement board; nor shall any member or employee of the board become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the retirement board. [L. '37, Ch. 87, § 7. Approved March 10, 1937.

1938. The state teachers' retirement board may invest funds in county relief warrants issued before the expiry of the act authorizing them (§ 335.17-1 et seq.) payable from taxes levied after the expiry of such act. *Kraus v. Riley*, 107 Mont. 116, 80 P. (2d) 864.

1132.8. Method of financing—funds created—annuity savings—annuity reserve—pension accumulation—pension reserve—expense. There are hereby created and established an "annuity savings fund", and "annuity reserve fund", a "pension accumulation fund", a "pension reserve fund" and an "expense fund", into which funds all of the assets of the retirement system shall be credited according to the purpose for which they are held as hereinafter prescribed.

Annuity Savings Fund

(1) The annuity savings fund shall be a fund in which shall be accumulated the contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made in the following manner:

(a) Each employer shall deduct from the compensation of each member on each and every payroll of such member for each and every payroll period subsequent to the date

on which such member became a member an amount equal to five per centum of such member's earnable compensation but no employer shall make any deductions for annuity purposes from the compensation of a member who has attained the age of sixty and rendered thirty-five years of creditable service if such a member elects not to contribute.

(b) In determining the amount earnable by a member in a payroll period, the retirement board may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from compensation for any period less than a full payroll period if a teacher was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth of one percentum of the annual compensation upon the basis of which said deduction is to be made.

(c) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt in full for his salary or compensation; and payment of salary or compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment except as to the benefits provided by this act.

(d) Notwithstanding the preceding provision, no deduction shall be made from any member's salary on account of which the state's contributions on his account are in default.

(e) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the retirement board, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the total amount which he previously withdrew therefrom as provided in this act, or any part thereof; or any member may deposit therein by a single payment or by an increased rate of contribution amounts for the purchase of an additional annuity, but such additional payments shall not exceed the amounts computed to provide with his prospective retirement allowance a total retirement allowance of one-half of his average final compensation at the minimum age at which the member will become eligible for superannua-

tion retirement. Such additional amounts so deposited shall become a part of his accumulated contributions, except in the case of disability retirement, when they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his pension. The accumulated contributions of a member withdrawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this act, shall be paid from the annuity savings fund, and an amount equivalent to the difference between the accumulated contributions calculated at regular interest and the amount paid shall be transferred to the expense fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

Annuity Reserve Fund

(2) The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this act. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

Pension Accumulation Fund

(3) The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) On account of each member there shall be paid annually beginning with the first day of July, nineteen hundred and thirty-seven, into the pension accumulation fund by the state of Montana, a certain percentage of the earnable compensation of each member of the retirement system for the preceding school year to be known as the "normal contribution" and a further percentage known as the "deficiency contribution". The rates per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuation. Provided that until such time as the legislative assembly shall provide adequate funds for the establishment of such reserves as are set

up in this act, such parts of this act as deal with the reserve to be built up by contributions from the state shall be inoperative. Until such time as stated above the state shall pay to the teachers retired under this act the amounts specified therein, provided, however, that for each of the years beginning July 1, 1939, and ending June 30, 1940, and beginning July 1, 1940, and ending June 30, 1941, the state's contribution shall be one hundred thousand dollars (\$100,000.00) for each fiscal year; and which sum is hereby appropriated from the general fund of the state of Montana for such purpose; provided, further, that the retirement board shall pay to the teachers qualifying under this act their proportionate share of the amounts specified herein. [L. '39, Ch. 202, § 2, amending L. '37, Ch. 87, § 8 [1132.8(3)(a)]. Approved and in effect March 17, 1939.

Section 5 repeals conflicting laws.

(b) On the basis of regular interest and of such mortality and other tables as shall be adopted by the retirement board, the actuary engaged by the retirement board to make each valuation required by this act during the period over which the deficiency contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant, which if contributed on the basis of the compensation of such member throughout his entire period of active service, would be sufficient to provide for the payment of any pension payable by the state on his account. The rate per centum so determined shall be known as the "normal contribution" rate. After the deficiency contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the retirement board and on the basis of regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

(c) Immediately succeeding the first valuation the actuary engaged by the retirement board shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum of the amount of the total pension liability on account of all members and beneficiaries not dischargeable by the present assets of the pension accumulation fund and the aforesaid

normal contribution if made on account of such members during the remainder of their active service. The rate per centum, originally so determined, shall be known as the "deficiency contribution". Provided such rates shall not go into effect until the year 1939-1940.

(d) The total amount payable annually by the state of Montana into the pension accumulation fund shall be not less than the sum of the rates per centum known as the normal contribution rate and the deficiency contribution rate of the total compensation earnable by all members during the preceding school year, provided, however, that the amount of each annual deficiency contribution shall be at least three per centum greater than the preceding annual deficiency payment, and that the aggregate payment into the pension accumulation fund shall be sufficient, when combined with the amount in the pension accumulation fund, to provide the pensions payable out of the fund during the current year.

(e) The deficiency contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the retirement board, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the normal contributions to be received on account of teachers who are at that time members.

(f) All interest and dividends earned on the funds of the retirement system shall be credited to the pension accumulation fund and the amounts required to allow regular interest on the annuity savings fund, the annuity reserve fund and the pension reserve fund shall be transferred to the respective funds from the pension accumulation fund.

(g) All pensions and benefits in lieu thereof, including pensions payable under section 12 [1132.12], with the exception of those payable to members not entitled to prior service credit shall be paid from the pension accumulation fund.

(h) All moneys and securities to the credit of the public school teachers' retirement salary fund and the public school teachers' permanent fund on the first day of September, nineteen hundred and thirty-seven, shall be paid by the state treasurer into the pension accumulation fund.

(i) The retirement board may in its discretion transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve

creditable to the annuity reserve fund or the pension reserve fund, as shown by actuarial valuation.

(j) Upon the retirement of a new entrant, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

Pension Reserve Fund

(4) The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members not entitled to prior service credit and from which shall be paid such pensions and benefits in lieu thereof. Should a member not entitled to prior service credit who has been retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, the pension reserve held on account of his pension shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such a disability beneficiary be reduced as a result of an increase in his earning capacity the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

Expense Fund

(5) The expense fund shall be the fund to which shall be credited all moneys contributed for the administrative expenses of the retirement system and from which the expense of the administration of the retirement system shall be paid exclusive of amounts payable as retirement allowances and as other benefits provided herein. Contributions shall be made to the expense fund as follows:

(a) The retirement board shall determine annually the amount required to defray such expense in the ensuing fiscal year. There shall be deducted from the compensation of each member by the several employers the sum of one dollar for each year, in addition to all other deductions herein provided, which sum shall be transmitted to the retirement board in the same manner as herein provided for the transmission of other member contributions, and such sums so deducted shall become a part of, and be charged to, said expense fund, and shall not become a part of the members' accumulated contributions.

(b) The amount equivalent to the difference between the accumulated contributions calculated at regular interest and the amount paid at withdrawal or death shall be transferred to the expense fund.

(c) The expense not payable by the contribution of members and amounts transferred

from the annuity savings fund as provided under paragraph (b) of this subsection shall be contributed and paid by the state of Montana, provided that for the year beginning July 1, 1939, and ending June 30, 1940, there is hereby appropriated out of the general fund for administration four thousand dollars (\$4,000.00); and for the year beginning July 1, 1940, and ending June 30, 1941, there is hereby appropriated out of the general fund for administration four thousand dollars (\$4,000.00). [L. '39, Ch. 202, § 3, amending L. '37, Ch. 87, § 8 [1132.8]. Approved and in effect March 17, 1939.]

Section 5 repeals conflicting laws.

1132.9. Duties of employer—records and information—inform teacher of system—certify teachers' names to board—monthly reports of changes. (1) Each employer shall keep such records and from time to time shall furnish such information as the retirement board in the discharge of its duties may require.

(2) Upon the employment of any teacher to whom this act may apply, he shall be informed by his employer of his duties and obligations in connection with the retirement system as a condition of his employment. Every teacher accepting employment shall be deemed to consent and agree to any deductions from his compensation required herein and to all other provisions of this act.

(3) During September of each year, or at such time as the retirement board shall approve, each employer shall certify to the retirement board the names of all teachers to whom this act applies.

(4) Each employer shall on the first day of each calendar month or at such less frequent intervals as the retirement board may approve, notify the retirement board of the employment of new teachers, removals, withdrawals and changes in salary of members that shall have occurred during the month preceding or the period covered since the last notification. [L. '37, Ch. 87, § 9. Approved March 10, 1937.]

1132.10. Collection of contributions by members—employer to deduct—monthly remittance—board may modify method of collection. The collection of members' contributions shall be as follows:

(a) Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll period subsequent to the first day of September, nineteen hundred and thirty-seven, the contribution payable by such member as provided in this act.

(b) Each employer shall transmit monthly a warrant for the total amount of such deduction to the secretary of the retirement board. The secretary of the retirement board after making records of all such warrants shall transmit them to the state treasurer who shall collect the same; any employer who fails to transmit such warrants shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10.00), nor more than one hundred dollars (\$100.00) for each violation. [L. '39, Ch. 202, § 4, amending L. '37, Ch. 87, § 10 [1132.10(b)]. Approved and in effect March 17, 1939.

Section 5 repeals conflicting laws.

(c) Notwithstanding the foregoing, nothing in this section shall prevent the retirement board from modifying the method of collecting the contributions of members so that employers may retain the amount so deducted and have a corresponding amount deducted from state funds otherwise payable to them. [L. '37, Ch. 87, § 10. Approved March 10, 1937.

1132.11. Contribution by state—liquor control board receipts—appropriation from. (1) From and after the first day of July, 1937, there shall be and is hereby appropriated from all moneys derived from the sales of liquor at all of the state liquor stores within the state, five per centum (5%) of all of the net receipts of such sales for the purpose of creating and maintaining the pension accumulation fund created by and in section 8 [1132.8] of this act. Beginning on the first day of August, 1937, the Montana liquor control board shall on the first day of each month or as soon thereafter as the said Montana liquor control board has determined the net receipts from all sales of liquor at the state liquor stores for the month next preceding, disburse to the state treasurer a sum equal to five per centum (5%) of such net receipts, such sum to be taken from moneys derived from the sale of liquor at the state liquor stores. If at any time when such disbursement is required hereby to be made, there are not sufficient moneys on hand to make the same, the deficit shall be made up from the first receipts from the sales of liquor at the state liquor stores received by the said Montana liquor control board thereafter. The state treasurer shall immediately upon receipt of any and all sums hereby required to be made to him, place them in the pension accumulation fund created by and in section 8 [1132.8] of this act. Provided that if the receipts shall exceed the amount required under the provisions of subdivision (3) (a), section 8 [1132.8] of this act, said surplus

shall revert to the general fund of the state. [L. '37, Ch. 87, § 11. Approved March 10, 1937.

1132.12. Discontinuance of former retirement system—transfer of assets—existing retirement salaries—fund payable from—persons retired under former system—adjustments—actuary's duties—state deficiency contribution—conditions for increase—refunding excess to contributors. (1) On and after the first day of September, nineteen hundred and thirty-seven no further retirements shall be made under the provisions of the law governing the former retirement system and no benefits shall be paid either from the public school teachers' retirement salary fund, or from the public school teachers' permanent fund as established under such law, except as hereinafter described.

(2) All assets held in the funds maintained under said law on the first day of September, nineteen hundred and thirty-seven shall be transferred to the pension accumulation fund of the retirement system to be held in trust and invested as a trust fund and disbursed only in payment of benefits to those teachers on whose account they were contributed.

(3) Upon the transfer of such trust funds, the retirement salaries of all persons entitled to retirement salaries from the former retirement system on September first, nineteen hundred and thirty-seven shall be paid beginning as of September 1, 1937, from such trust fund.

(4) Any such person who having retired upon a retirement allowance under said former retirement system, shall have retired after having served as a teacher for at least thirty-five school years, fifteen of which, including the last ten years, shall have been in the schools of this state, and who shall elect under the next preceding subdivision of this section to receive his interest in said public school teachers' retirement salary fund and said public school teachers' permanent fund in the form of an annuity, shall be entitled, while he shall remain retired, to receive and be paid from the said pension accumulation fund an annual allowance which, together with his said annuity, shall equal the sum of \$600.00. Any other person retired upon such allowance who shall elect to receive his interest in said funds in the form of an annuity shall, upon reaching the age of sixty years, be entitled, while he shall remain retired, to receive and be paid from the said pension accumulation fund an annual allowance, which together with his said annuity, shall equal a sum which shall be that proportion of \$600.00 which the number of school years which he shall have served

as a teacher, and credited under the former retirement system bears to thirty-five.

(5) The retirement board of the teachers' retirement system of the state of Montana shall employ an actuary to value the liabilities to be assumed by the pension accumulation fund of the retirement system as of the first day of September, nineteen hundred and thirty-seven on account of the payment of the retirement salaries of all persons entitled thereto under the former retirement system as provided under subsection (2) of this section. The actuary so employed shall be an actuary also approved by the retirement salary fund board of the former retirement system. If such valuation shows that the amount held in trust in the pension accumulation fund for the payment of these retirement salaries is less than the amount required to continue such payments to the persons so retired the deficiency contribution rate payable by the state as provided under subsection (3) of section 8 [1132.8] of this act shall be increased in order to provide future contributions which shall be sufficient with the funds held in trust to provide such payments. If the valuation shows that the amount held in trust is in excess of the amount required to continue such payments to the persons so retired, then the amount of the excess shall be paid pro rata to the active teachers who were contributors under the provisions of the former retirement act in ratio to the amounts contributed under the provisions of the former retirement act in ratio to the amounts contributed under the provisions of the former retirement act. [L. '37, Ch. 87, § 12. Approved March 10, 1937.]

Note. Attention is called to the reptition at the end of this section.

1132.13. Benefits—exemption from taxation, execution, and garnishment—assignment. The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this act and the accumulated contributions and cash and securities in the various funds created under this act are hereby exempted from any state, county or municipal tax of the state of Montana, and shall not be subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process whatsoever and shall be unassignable except as in this act specifically provided. [L. '37, Ch. 87, § 13. Approved March 10, 1937.]

1132.14. Protection against fraud—penalty—errors—correction. Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this retirement system in any

attempt to defraud such system as a result of such act, shall be guilty of a misdemeanor and shall be punishable therefor under the laws of the state of Montana. Should any change or error in records result in any member or beneficiary receiving from the retirement more or less than he would have been entitled to receive had the records been correct, then on discovery of any such error, the retirement board shall correct such error, and as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. [L. '37, Ch. 87, § 14. Approved March 10, 1937.]

1132.15. Limitation on membership. No other provision of law in any other statute which provides wholly or partly at the expense of the state of Montana or of any employer for retirement benefits for teachers of the said state, their widows, or other dependents, shall apply to members or beneficiaries of the retirement system established by this act, their widows or other dependents. [L. '37, Ch. 87, § 15. Approved March 10, 1937.]

1132.16. Guarantee by state. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund and the maintenance of annuity reserves in the annuity reserve fund and of pension reserves in the pension reserve fund as provided for in this act and the payment of all annuities, pensions, refunds, and other benefits granted under this act are hereby made obligations of the state of Montana, provided, however, that this section shall not be so construed as to make it mandatory upon the state to contribute a larger sum of money than specifically provided in section 8 [1132.8], especially (3) and section 11 [1132.11] of this act. [L. '37, Ch. 87, § 16. Approved March 10, 1937.]

1132.17. Constitutionality—partial invalidity saving clause. If any section, subdivision, paragraph, sentence, clause, or part of this act is declared to be unconstitutional, the remainder of this act shall not thereby be invalidated. [L. '37, Ch. 87, § 18 no section 17 in act). Approved March 10, 1937.]

1132.18. Effective date of act. Except as otherwise provided herein this act shall be in full force and effect from and after its passage and approval. [L. '37, Ch. 87, § 19. Approved March 10, 1937.]

1132.19. Conflicting laws repealed. All acts and parts of acts in conflict herewith are hereby repealed. [L. '37, Ch. 87, § 20. Approved March 10, 1937.]

CHAPTER 110

VEHICLES USED IN TRANSPORTATION OF PUPILS — BUSSES

Section

1186.3. Qualifications of school bus driver.

1186.3. Qualifications of school bus driver. No person shall drive or operate, or be employed or permitted to drive or operate any school bus who has not received a certificate from the board of trustees of the school district in which the school bus is to be driven or operated certifying that such person is at least twenty-one years of age, is of good moral character and is qualified and competent for such position. [L. '39, Ch. 16, § 1, amending R. C. M. 1935, § 1186.3. Approved and in effect February 11, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 111

TEXT-BOOKS

1200. Compensation of text-books commissioners. *Repealed.*

1938. The allocation to the state public school general fund under section 2815.192 is subject to the provisions of a general law for the disbursement of all money in that fund under section 1200 et seq. State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

CHAPTER 112

UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS — STATE SUPPORT

Section

1200.4. State public school general fund created—disposal of school moneys — common school equalization fund.

1200.4-1. Omitted as special law.

1200.4-2. Omitted as special law.

1200.1. Uniform system of free, public schools—state support—schedule of state contributions.

1937. So long as the schedule fixed by the state board of education bears a reasonable relationship to the actual cost of transportation of the pupils, it fixes and determines the rate of the state's contribution. McBride v. Reardon, 105 Mont. 96, 69 P. (2d) 975.

1937. The schedule fixed by the board under section 1200.1 does not constitute maximum rates only, and the intent is that it shall be uniform throughout the state, actual cost being eliminated. McBride v. Reardon, 105 Mont. 96, 69 P. (2d) 975.

1937. The fact that the county or the school district, in some instances, does not transport some of the children, but that it is done by parents or others, is no ground for enjoining the distribution of

state public school general funds to the counties for such transportation. McBride v. Reardon, 105 Mont. 96, 69 P. (2d) 975.

1937. This statute, taken as a whole, disclosed the legislative purpose to require the state to make the contribution without reference to the actual cost of transportation even though the counties or the school district do not in fact assume the obligation of transporting the children. McBride v. Reardon, 105 Mont. 96, 69 P. (2d) 975.

1937. The proper computation to be made by the state superintendent must be based upon all of the elements of the schedule fixed by the state board of education. It is not proper to make distribution of the money solely on the number of children transported in each district, but there must also be considered the distance they are transported; and elementary and high school transportation must be computed separately. McBride v. Reardon, 105 Mont. 96, 69 P. (2d) 975.

1200.4. State public school general fund created—disposal of school moneys—common school equalization fund. There is hereby created and established a fund to be known and designated as the state public school general fund, which the treasurer of the state of Montana shall ever keep separate and apart from all other funds and moneys in his custody, and into which there shall be paid all moneys coming to the state for distribution in support of the public schools of the state, save only such school funds as by section 5, article XI of the constitution of the state of Montana, or otherwise by constitutional provisions are to be kept and distributed in a manner other than is provided in this act. Providing one hundred fifty thousand dollars (\$150,000.00) for the period ending March 15, 1940, and a like amount for the period ending March 15, 1941, shall remain in the common school equalization fund to be distributed as provided in the act creating said fund, until March 15th, 1941. Provided further that the total amount received from the common school equalization fund and the state public school general fund does not exceed for any school year the amount needed to operate such school as determined under the plan set up by the state board of education as provided in the common school equalization fund law. [L. '39, Ch. 169, § 1, amending R. C. M. 1935, § 1200.4, as amended by L. '37, Ch. 38, § 1. Approved and in effect March 15, 1939.]

1200.4-1. Omitted as special law. Transfer of a sum of money from the state public school general fund to the public school interest and income fund authorized. [L. '37, Ch. 11, § 1. Approved and in effect February 10, 1937.]

1200.4-2. Omitted as special law. Transfer of a sum of money from the state public school general fund to the state common school equalization fund directed, and declaring an

emergency. [L. '39, Ch. 148, § 1. Approved and in effect March 11, 1939.]

1200.6. County superintendent's annual report — contents.

1937. ✓ So long as the schedule fixed by the state board of education bears a reasonable relationship to the actual cost of transportation of the pupils, it fixes and determines the rate of the state's contribution. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1937. ✓ The proper computation to be made by the state superintendent must be based upon all of the elements of the schedule fixed by the state board of education. It is not proper to make distribution of the money solely on the number of children transported in each district, but there must also be considered the distance they are transported; and elementary and high school transportation must be computed separately. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1937. ✓ The fact that the county or the school district, in some instances, does not transport some of the children, but that it is done by parents or others, is no ground for enjoining the distribution of state public school general funds to the counties of such transportation. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1937. ✓ The schedule fixed by the board under section 1200.1 does not constitute maximum rates only, and the intent is that it shall be uniform throughout the state, actual cost being eliminated. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1937. ✓ This statute, taken as a whole, disclosed the legislative purpose to require the state to make the contribution without reference to the actual cost of transportation even though the counties or the school district do not in fact assume the obligation of transporting the children. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1200.7. Computation of state's contribution for transportation.

1937. ✓ The proper computation to be made by the state superintendent must be based upon all of the elements of the schedule fixed by the state board of education. It is not proper to make distribution of the money solely on the number of children transported in each district, but there must also be considered the distance they are transported; and elementary and high school transportation must be computed separately. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1937. The schedule fixed by the board under section 1200.1 does not constitute maximum rates only, and the intent is that it shall be uniform throughout the state, actual cost being eliminated. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1937. ✓ So long as the schedule fixed by the state board of education bears a reasonable relationship to the actual cost of transportation of the pupils, it fixes and determines the rate of the state's contribution. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1937. ✓ The fact that the county or the school district, in some instances, does not transport some of the children, but that it is done by parents or others, is no ground for enjoining the distribution of state public school general funds to the counties for such transportation. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1937. ✓ This statute, taken as a whole, disclosed the legislative purpose to require the state to make the contribution without reference to the actual cost of transportation even though the counties or the school district do not in fact assume the obligation of transporting the children. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1200.9. Payment to counties of amounts due.

1937. ✓ The proper computation to be made by the state superintendent must be based upon all the elements of the schedule fixed by the state board of education. It is not proper to make distribution of the money solely on the number of children transported in each district, but there must also be considered the distance they are transported; and elementary and high school transportation must be computed separately. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1937. ✓ So long as the schedule fixed by the state board of education bears reasonable relationship to the actual cost of transportation of the pupils, it fixes and determines the rate of the state's contribution. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1937. ✓ The fact that the county or the school district, in some instances, does not transport some of the children, but that it is done by parents or others, is no ground for enjoining the distribution of state public school general funds to the counties for such transportation. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1937. ✓ The schedule fixed by the board under section 1200.1 does not constitute maximum rates only, and the intent is that it shall be uniform throughout the state, actual cost being eliminated. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

1937. ✓ This statute, taken as a whole, discloses the legislative purpose to require the state to make the contribution without reference to the actual cost of transportation even though the counties or the school district do not in fact assume the obligation of transporting the children. *McBride v. Reardon*, 105 Mont. 96, 69 P. (2d) 975.

CHAPTER 113

FINANCE

1218.1. Preamble — acknowledgment of state's obligation concerning permanent school fund.

1937. ✓ In an action by an irrigation district against the state, the state board of land commissioners, and the county treasurer of the county in which the district was situated, to have certain levies of irrigation assessments declared valid liens upon lands owned by the state, in the district, and that the district have a right to collect such assessments from the state, it was held that the plaintiff had such right, and that the permanent school fund, from which money was loaned on first mortgage on lands which later were incorporated into the district, was not reduced illegally in violation of the constitution making such fund inviolate. *Toole County Irrigation District v. State*, 104 Mont. 420, 67 P. (2d) 989.

1218.2. Assumption of farm mortgage loans—promise of state to repay moneys loaned and interest.

1937. ✓ Cited in Toole County Irrigation District v. State, 104 Mont. 420, 67 P. (2d) 989

1218.6. Payment of taxes and costs of foreclosure authorized—interest to be transferred quarterly to public school interest and income fund—transfer from farm loan sinking fund.

1937. ✓ Cited in Toole County Irrigation District v. State, 104 Mont. 420, 67 P. (2d) 989.

CHAPTER 115

BONDS

Section

- 1224.3. What forms of bonds may be issued—“amortization bonds” defined—“serial bonds” defined.
- 1224.4. Limitation of term of bonds—interest—redemption.
- 1224.6. Certain bonds may be issued without holding an election—term.
- 1224.10. Meeting of board of trustees to consider petition and calling of election—notice of election—form—posting of notice—publication.
- 1224.11. Preparation of ballots—form.
- 1224.14. Percentage of electors required to authorize bond issue.
- 1224.16. Form of notice of sale of bonds—selling price—not less than par value—bids—certified check.
- 1224.17. Publication of notice of sale.

1224.3. What forms of bonds may be issued—“amortization bonds” defined—“serial bonds” defined. All bonds hereafter issued by any school district in this state shall be amortization bonds, if bonds in this form can be sold and disposed of at a reasonable rate of interest. If amortization bonds cannot be sold and disposed of at a reasonable rate of interest advantageous to the people for whose benefit the same are issued, then in such case serial bonds may be issued in place of amortization bonds.

The term “amortization bonds”, as used in this act, is hereby defined as meaning that form of bonds on which a part of the principal is required to be paid each time interest becomes due and payable, which part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases, so that the combined amount due on principal and interest on each succeeding due date remains the same until the bonds are fully paid; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

The term “serial bonds”, as used in this act, is hereby defined as being a bond issue payable in annual installments, one installment, consisting of one or more bonds, becoming due and payable each year, the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run; provided, however, that the installment becoming due and payable the first year may vary in amount from the others to the extent resulting from fixing the amount of each bond of the other installments at the nearest practical multiples of one hundred dollars (\$100.00). [L. '39, Ch. 178, § 1, amending R. C. M. 1935, § 1224.3. Approved and in effect March 17, 1939.

1224.4. Limitation of term of bonds—interest—redemption. No school district bonds shall be issued for a term longer than twenty (20) years, provided, however, that bonds issued to refund or redeem outstanding bonds shall not be issued for a longer term than ten (10) years, except when the unexpired term of the bonds to be refunded is in excess of ten (10) years, in which case the refunding bonds may be issued for such unexpired term. All bonds shall be redeemable when one-half of the term for which they were issued has expired and on any interest due date thereafter prior to their maturity, and such redemption right must be stated on the face of each bond. The interest shall not exceed six per centum (6%) and shall be payable semi-annually. [L. '39, Ch. 178, § 2, amending R. C. M. 1935, § 1224.4. Approved and in effect March 17, 1939.

1224.6. Certain bonds may be issued without holding an election—term. Bonds issued for the purpose of providing the necessary funds to pay indebtedness to other district or districts, and bonds issued for the purpose of providing necessary funds to pay and redeem outstanding bonds may be issued without submitting the question of doing so at an election. In order to issue bonds for such purposes it shall only be necessary for the board of school trustees, at a regular or duly called special meeting of the board, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be paid or the bonds to be refunded, showing the reasons for issuing new bonds and fixing and determining the term and details of such new bonds, and then to give notice of the sale of such new bonds in the same manner that notice is required to be given of the sale of bonds authorized at a school election; provided that bonds issued to refund bonds issued prior to March 1, 1929, shall not be issued for a longer term

than ten (10) years, and that bonds issued to refund bonds issued on or after March 1, 1929, shall not be issued for a longer term than the unexpired term of the bonds to be refunded; except when the unexpired term of the bonds to be refunded is in excess of ten (10) years, in which case the refunding bonds may be issued for such unexpired term and provided further that bonds issued on or after March 1, 1929, shall not be refunded by the issuance of such new bonds unless the rate of interest provided in such new bonds shall be at least one-half ($\frac{1}{2}$) of one per cent (1%) lower than the rate of interest in the bonds to be refunded; and provided further that all refunding bonds so issued shall be sold in open competitive bidding, written bids and sealed bids for the purchase of such bonds to be considered the same as open bids. [L. '39, Ch. 178, § 3, amending R. C. M. 1935, § 1224.6, as amended by L. '37, Ch. 57, § 1. Approved and in effect March 17, 1939.

1224.10. Meeting of board of trustees to consider petition and calling of election—notice of election—form—posting of notice—publication. Upon such petition being received by the clerk of the school district, a meeting of the board of trustees shall be called to consider the same. The board of trustees shall be the judges of the sufficiency of the petition and the findings of such board shall be conclusive against the school district in favor of the innocent holder of bonds issued pursuant to the election called and held by reason of the presentation of such petition. If it is found that the petition is in proper form and bears the requisite number of signatures, the board shall pass and adopt a resolution which shall recite the essential facts in regard to the petition and its presentation, fix the exact amount of bonds proposed to be issued, which may be more or less than the amount estimated in the petition, determine the number of years through which the bonds are to be paid, fix the date of election, which shall not be less than twenty (20) days, nor more than thirty (30) days after the date of the passage and adoption of such resolution, appoint three electors of the district who are qualified to vote at such election to act as judges of election, at each voting place and direct the clerk to give notice of such election. The notice of election shall designate one or more school houses in said school district as voting places and be in substantially the following form:

**“NOTICE OF SCHOOL DISTRICT BOND
ELECTION**

Notice is hereby given by the undersigned clerk of School District No. of

County, State of Montana, that pursuant to a certain resolution duly adopted at a meeting of the board of trustees of said school district held on the day of, A. D. 19, an election of the registered qualified electors of School District No. of County, State of Montana, who are taxpayers therein and whose names appear on the last completed assessment roll for state, county and school district taxes prior to the holding of such election, will be held on the day of, A. D., 19, at for the purpose of voting upon the question of whether or not the board of school trustees shall be authorized to issue and sell bonds of said school district in the amount of dollars, (\$.....), bearing interest at a rate not exceeding six per centum (6%) per annum, payable semi-annually, for the purpose of (here state purpose)..... The bonds to be issued will be either amortization or serial bonds, and amortization bonds will be the first choice of the board of trustees. The bond to be issued, whether amortization or serial bonds, will be payable in installments over a period of (state number) years.

The polls will be open from o'clock m. and until o'clock m. of the said day.

Dated and posted this day of, A. D., 19

.....
Clerk of School District No.
of County, State of Montana.”

If the bonds proposed to be issued are for more than one purpose, then each purpose shall be separately stated in the notice together with the proposed amount of bonds therefor.

The school district clerk shall, not less than fifteen (15) days before the day specified for such election, post notice of such election in not less than three (3) public places within the district, and in incorporated cities and towns at least one (1) notice must be posted at each voting place designated for such election.

In school districts of the first class the board of trustees must also cause the notice to be published once a week for two (2) successive weeks in some newspaper of general circulation in the district, if one be published therein, in addition to such posting. [L. '39, Ch. 178, § 4, amending R. C. M. 1935, § 1224.10. Approved and in effect March 17, 1939.

1224.11. Preparation of ballots—form. The school district clerk shall cause ballots to be prepared for all such bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election,

separate ballots shall be prepared for each purpose. All such ballots shall be substantially in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Mark an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue make an X or similar mark in the square before the words "BONDS—NO".

Shall the board of trustees be authorized to issue and sell bonds of this school district in the amount of.....dollars (\$.....) bearing interest at a rate not exceeding six per centum (6%) per annum, payable, semi-annually, during a period not exceeding.....years, for the purpose of.....(here state the purpose the same way as in the notice of election).

☐ BONDS—YES.

☐ BONDS—NO.

[L. '39, Ch. 178, § 5, amending R. C. M. 1935, § 1224.11. Approved and in effect March 17, 1939.

1224.14. Percentage of electors required to authorize bond issue. Whenever the question of issuing bonds for any purpose is submitted to the qualified electors of a school district at either a general or special school election not less than forty (40) per centum of the qualified electors entitled to vote on such question at such election must vote thereon, otherwise such question shall be deemed to have been rejected; provided, however, that if forty (40) per centum or more of such qualified electors do vote on such question at such election and a majority of such votes shall be cast in favor of such proposition, then such proposition shall be deemed to have been approved and adopted. [L. '37, Ch. 7, § 1, amending R. C. M. 1935, § 1224.14. Approved and in effect February 9, 1937.

Section 2 repeals conflicting laws.

1224.15. Meeting of board of trustees to canvass election returns—resolution for bond issue.

1935. The issuance of the bonds within 60 days after election and adoption of resolution is directory only, and delay beyond that time caused by litigation and negotiation with the federal government held not to affect legality of authority voted by district. State ex rel. Sullivan v. School District, 100 Mont. 439, 50 P. (2d) 245.

1224.16. Form of notice of sale of bonds—selling price—not less than par value—bids—certified check. The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose, and shall be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the board of trustees of School District No.....of.....County, State of Montana, that the said board of trustees will on the.....day of....., 19....., at the hour of.....o'clockm. at....., in the said school district, sell to the highest and best bidder for cash, either amortization or serial bonds of the said school district in the total amount of.....dollars, (\$.....), for the purpose of.....

Amortization bonds will be the first choice and serial bonds will be the second choice of the said school board.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the said board of trustees may determine upon at the time of sale, both principal and interest to be payable in semi-annual installments during a period of.....years from the date of issue.

If serial bonds are issued and sold they will be in the amount of.....dollars, (\$.....) each, except the first bond which will be in the amount of.....dollars, (\$.....) the sum of.....dollars (\$.....) of the said serial bonds will become payable on the.....day of....., 19....., and the sum of.....dollars, (\$.....) will become payable on the same day each year thereafter until all of such bonds are paid.

The said bonds, whether amortization or serial bonds, will bear date of....., 19....., and will bear interest at a rate not exceeding six per centum (6%) per annum, payable semi-annually, on the.....day of.....(month).....and.....(month).....in each year, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The said bonds will be sold for not less than their par value with accrued interest, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board of trustees reserves the right to reject any and all bids and to sell the said bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners must be

accompanied by a certified check in the sum of.....dollars, (\$.....) payable to the order of the clerk, which will be forfeited by the successful bidder in the event that he shall refuse to purchase the said bonds.

All bids should be addressed to the undersigned clerk.

.....
Chairman, School District No.....
of.....County.
Address:.....

ATTEST:

.....
Clerk, School District No.....
of.....County.
Address:.....

[L. '39, Ch. 178, § 6, amending R. C. M. 1935, § 1224.16. Approved and in effect March 17, 1939.

1224.17. Publication of notice of sale. The school district clerk shall cause such notice to be published once a week for four successive weeks in some newspaper printed and published in the county in which the school district is situated, and when the amount of such bonds to be sold is ten thousand dollars (\$10,000.00) or more a regular notice thereof shall be published in some daily newspaper of the state printed and published once in a city of the first class and having a general circulation throughout the state, the first publication to be not less than thirty (30) days prior to the date of sale. When the amount of bonds to be sold is ten thousand dollars (\$10,000.00) or more, if so directed by the board of trustees, the clerk shall also cause a brief notice of the bond sale to be published in some newspaper in the city of New York. The clerk shall immediately after the first publication of such notice mail a copy thereof to the state board of land commissioners. [L. '39, Ch. 178, § 7, amending R. C. M. 1935, § 1224.17. Approved and in effect March 17, 1939.

Section 8 repeals conflicting laws.

CHAPTER 117

HIGH SCHOOL CODE — COUNTY HIGH SCHOOLS — JUNIOR HIGH SCHOOLS — DISTRICT HIGH SCHOOLS — JOINT SCHOOL SYSTEMS

Section	
1262.14.	Bond limit — term — rate of interest — form.
1262.34-1.	Bonds for high schools or high school dormitories — validation — county debt limitation.
1262.37.	School districts may establish high schools — conditions.

Section

1262.44-A.	Pupil attending high school in adjoining county in another state — transportation, tuition and board — power of trustees in county of residence to pay.
1262.81.	Attendance outside of county of pupil's residence—transfer of apportionments.
1262.83.	General powers and duties of boards of trustees.
1262.99a.	Vocational training centers—certain high schools—designation.
1262.99b.	Same—branches of training included.
1262.99c.	Same — admission — eligibility and procedure.
1262.99d.	Same — attendance — persons residing in another county.
1262.99e.	Same—admission—rules and regulations.
1262.99f.	Same—same—adults—tuition fees.
1262.99g.	Same—materials and equipment—fees for use of.

1262.14. Bond limit—term—rate of interest—form. In any county of the first [,] second, third, fourth or fifth class the amount of all bonds requested or authorized under the provisions of this chapter shall not exceed, in any one county, in the aggregate as outstanding obligations of the county the sum of four hundred thousand dollars (\$400,000.00), and in all other counties, in any one county, the sum of three hundred thousand dollars (\$300,000.00). Such bonds shall mature in twenty (20) years, or less, and shall bear interest and the general form of the bonds shall be fixed by the board of county commissioners. [L. '39, Ch. 75, § 1, amending R. C. M. 1935, § 1262.14. Approved and in effect February 28, 1939.

1262.34-1. Bonds for high schools or high school dormitories — validation — county debt limitation. That any election heretofore held for the purpose of authorizing the board of county commissioners of any county of the state of Montana to issue bonds of the county for the purchase or erection of a high school building or buildings and for the purchase or erection of a high school dormitory or dormitories under provisions of chapter 117 revised codes of Montana, 1935, which election was held after notice stating the time and places of holding the election, the amount and character of the bonds proposed to be issued, and the purposes thereof was duly published and posted for the time and in the manner required by section 4630.10, revised codes of Montana, 1935, and at which election the proposal to issue such bonds received a majority of all votes tendered and votes cast at such election upon such proposition, and the issuance of which any such board has assumed to authorize are hereby ratified and confirmed, and declared to be valid and subsisting obligations of full force and effect and to all intents and purposes, and all such bonds, whether issued

or hereafter to be issued, are legalized and declared to be valid and legal and subsisting obligations of and against the county issuing the same, regardless of any error, defect, omission, irregularity, or departure from statute in the holding or conduct of such election or registration therefor, in the proceedings of the board of trustees of the county high school, in the form of the proposition submitted to the electors, or in any of the steps or proceedings relating to the issuance of such bonds, provided the issuance of such bonds was first submitted to the voters of said county and a majority of all the votes cast by such voters was in favor of such bond issue as declared by the minutes of the board of county commissioners or as otherwise made to appear with certainty, does not cause the indebtedness of the county to exceed any constitutional or statutory limitation of indebtedness. [L. '37, Ch. 110, § 1. Approved and in effect March 15, 1937.]

Section 2 repeals conflicting laws.

1262.37. School districts may establish high schools — conditions. Whenever the interests of any school district require it, the board of trustees of the district, with the approval of the superintendent of public instruction, may establish a high school and make the necessary provisions for its quarters, equipment, and teaching force in the manner provided for in section 1262.38, provided, that the transportation and payment of tuition, or the payment of board, room and tuition for the high school students of the district for the purpose of attending a high school in another district, shall be in lieu and the equivalent of establishing a high school and making the necessary provisions for its quarters, equipment, and teaching force, provided further that the total amount of transportation paid to any high school student from all sources shall not exceed the maximum amount as stipulated in section 1010 of the revised codes of Montana, 1935. [L. '39, Ch. 159, § 1, amending R. C. M. 1935, § 1262.37. Approved and in effect March 11, 1939.]

Section 2 repeals conflicting laws.

1262.38. Approval of superintendent of public instruction—how secured.

1936. Where a local board of school trustees failed to obtain the approval of the state superintendent of public instruction for the establishment of a 3-year high school, it was not entitled to a hearing before the board of education, the refusal of approval being justified. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. The question of the financial advisability of accrediting a high school as a 3-year high school held for the discretionary decision of the state board of education and the superintendent of public instruc-

tion. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Writ of mandamus will lie at the instance of a local board of school trustees to compel the state board of education to act on the question of accrediting a high school as a 3-year high school, if the required preliminary steps have been taken, but not to control its decision or discretion. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Since the members of the board of education must serve without compensation it is obvious that the legislature intended to have other state officers and employees assemble the necessary facts and information essential to the exercise of the board's supervision and to base its decisions on. The department of the superintendent of public instruction is the chief source of the detailed information upon which the board must depend. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The trustees of a local school district cannot mandamus the state board of education to accredit district school as a 3-year high school in the absence of a showing of performance of legal acts preliminary thereto on part of the board of trustees, such as approval of superintendent of public instruction, and demand on the state board. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The powers and duties vested in state board of education and the superintendent of public instruction, on the one hand, and the local board of school trustees, on the other, are supreme so long as each body acts within the law in its respective sphere and does nothing arbitrarily or capriciously. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Both the state board of education and the superintendent of public instruction and the local boards of school trustees are quasijudicial bodies or officials, and both exercise discretionary powers, and when such powers are exercised in the manner prescribed by law, no right of review exists. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1262.44-A. Pupil attending high school in adjoining county in another state—transportation, tuition and board—power of trustees in county of residence to pay. Whenever any eligible high school pupil has been authorized to attend a high school situated in a county in another state and which county adjoins the county in which such high school pupil resides, as provided in section 1262.81, the board of trustees of the county high school, if there be a county high school for the county in which the pupil resides, or if there be no such county high school then the board of trustees of the school district in which such pupil resides, may expend any moneys belonging to the county high school, or school district, as the case may be, for the purpose of either paying for transportation of such pupil from the home of such pupil to the high school in the other state which is to be attended, or for board, rent or tuition for such pupil while actually attending such

school, in the same manner and to the same extent as such money might be expended for transportation, board, rent or tuition of such pupil if permission were given for attending a high school in another district in the county in which the pupil resides in accordance with the provisions of section 1262.44. [L. '39, Ch. 217, § 3, adding new section to chapter 117, R.C.M. 1935. Approved and in effect March 17, 1939.]

Section 6 repeals conflicting laws.

1262.69. High school supervisor.

1936. Cited in State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1262.70. State board of education—duties.

1936. ✓ Where a local board of school trustees failed to obtain the approval of the state superintendent of public instruction for the establishment of a 3-year high school, it was not entitled to a hearing before the board of education, the refusal of approval being justified. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The question of the financial advisability of accrediting a high school as a 3-year high school held for the discretionary decision of the state board of education and the superintendent of public instruction. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Mandamus will not lie against the state board of education unless there is a clear legal right in the petitioner; a clear legal duty not involving discretion to act on the part of the board; and the right will be an effectual remedy. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Writ of mandamus will lie at the instance of a local board of school trustees to compel the state board of education to act on the question of accrediting a high school as a 3-year high school, if the required preliminary steps have been taken, but not to control its decision or discretion. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Since the members of the board of education must serve without compensation it is obvious that the legislature intended to have other state officers and employees assemble the necessary facts and information essential to the exercise of the board's supervision and to base its decisions on. The department of the superintendent of public instruction is the chief source of the detailed information upon which the board must depend. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The trustees of a local school district cannot mandamus the state board of education to accredit district school as a 3-year high school in the absence of a showing of performance of legal acts preliminary thereto on part of the board of trustees, such as approval of superintendent of public instruction, and demand on the state board. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The powers and duties vested in state board of education and the superintendent of public in-

struction, on the one hand, and the local board of school trustees, on the other, are supreme so long as each body acts within the law in its respective sphere and does nothing arbitrarily or capriciously. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ The state board of education is a part of the executive department of the state government. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Constitution, Art. 11, § 11, vests in the state board of education general control over and supervision of all state educational matters, including district and high schools. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1936. ✓ Both the state board of education and the superintendent of public instruction and the local boards of school trustees are quasijudicial bodies or officials, and both exercise discretionary powers, and when such powers are exercised in the manner prescribed by law, no right of review exists. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1262.81. Attendance outside of county of pupil's residence—transfer of apportionments.

The attendance of any eligible high school pupil at an accredited high school outside of the county of his residence, either within or without the state, must be authorized by the county superintendent of schools of the county of his residence [residence], when proper application has been made by the parent or guardian on or before September 1. No payment shall be made for attendance in another state except where such attendance is in a public elementary or secondary school in a county adjacent to the county of the student's residence.

After the budget for high school pupils authorized to attend high school outside of the counties in which they reside has been adopted by the county superintendent of schools, as provided in section 1263.8, the county superintendent of schools in which any such high school pupils resides, shall immediately give to the county treasurer written notice setting forth the names of the high school pupils authorized to attend high school outside of the county, with the name of the high school and the county in which situated which each such pupil has been authorized to attend, with the amount appropriated in such budget for each such pupil. The county treasurer shall, in the months of December and June in each school year, and immediately after the apportionment of the high school tax levy fund has been made, transmit to the county treasurer of each county in which any such high school pupil has been authorized to attend high school the amount apportioned for such high school pupil out of such fund together with the name of such high school pupil for whom the apportionment has been

made and the county treasurer of the county receiving the same shall credit such amount to the proper fund of the high school which such pupil has been authorized to attend. [L. '39, Ch. 217, § 4, amending R. C. M. 1935, § 1262.81. Approved and in effect March 17, 1939.]

Section 6 repeals conflicting laws.

1262.83. General powers and duties of boards of trustees. The board of trustees of every county high school and of every school district maintaining a district high school shall have the power, and it shall be its duty:

1. To keep a full and permanent record of all the acts of the board and of all warrants issued against funds disbursed by it; and to pay out money only upon warrants drawn against the funds of the high school, each warrant specifying upon its face the specific purpose for which it is drawn and the disbursement represented thereby, and to keep a separate set of books for all receipts and disbursements for high school purposes, which said books must be kept in accordance with the rules and regulations to be prescribed by the state superintendent of public instruction.

2. At its discretion as restricted by law to purchase, or otherwise acquire, real estate to be used as a site or sites for a high school, high school dormitories, high school gymnasiums, and other high school buildings, or for any proper high school purposes, and to sell and dispose of the same; at its discretion as restricted by law to build, purchase, or otherwise acquire, a high school building, high school dormitories, high school gymnasiums, and other buildings necessary for the high school, and to sell, move and dispose of the same; at its discretion as restricted by law to lease or contract with the board of trustees of any school district, or with any person, for suitable buildings or quarters to be used for any high school purposes or as a high school dormitory or gymnasium, and for such term not exceeding three (3) years as the board may deem for the best interests of the high school; at its discretion as restricted by law to purchase, or otherwise acquire, all necessary and appropriate equipment and supplies for the conduct, operation and administration of the high school, including high school dormitories and gymnasiums; at its discretion as restricted by law to make all contracts and to do all things necessary to carry out or execute all or any of the powers herein specified and conferred upon the board; provided, all boards of trustees of county high schools, or districts maintaining high schools, shall be prohibited from letting any contracts for building, furnishing, repairing or other work for the benefit of the school, or purchasing supplies for said

school, where the amount involved is seven hundred fifty dollars (\$750.00) or more, without first advertising in a newspaper published in the county for at least two (2) weeks, calling for bids to perform such work, and the board shall award the contract to the lowest responsible bidder; provided further that the board of trustees shall have the right to reject any or all bids; provided that these provisions shall not apply in case of extreme emergencies.

But the board shall exercise no power whatsoever conferred upon it by this subdivision whereby obligations are assumed or an indebtedness created in excess of the funds on hand, belonging to the high school, and not otherwise appropriated, or available to the board from the collection of taxes actually levied for the current year, or from the sale of bonds already authorized; and the power of the board to purchase, or otherwise acquire, or to sell, or dispose of, a site or sites for a high school, high school dormitories, high school gymnasiums, or other high school buildings, or for any proper high school purpose, or to build, purchase, or otherwise acquire, a high school building, high school dormitories, high school gymnasiums, or other buildings necessary for the high school or to sell, move or dispose of the same, shall be exercised only at the direction of a majority of the qualified electors of the county in the case of a county high school, or of the district in the case of a district high school, voting at an election to be called by the board, and otherwise noticed, conducted, canvassed and returned in the same manner as the annual election of school trustees in school districts of the first class; provided, however, that where a site or sites for a high school, high school dormitories, high school gymnasiums or other high school buildings or for any other proper high school purposes is contiguous to a site upon which there exists a high school building erected and in use for high school purposes, the board may purchase or otherwise acquire such contiguous site or sites without calling for a vote of the qualified electors of the county, in the case of a county high school, or the district, in the case of a district high school, and upon the making of such a purchase of, or otherwise acquiring, such site or sites, the board may enter into a contract or obligation providing for the purchase of said site or sites by deferred payments and may incur indebtedness for the whole or any part of said purchase price and shall not be restricted in the terms of said contract or the amount of said purchase price except that the amount of the indebtedness incurred shall not exceed ten thousand dollars

(\$10,000.00) as to principal and interest; provided further, however, that before making any such purchase the board shall duly pass a resolution declaring such lands, to be purchased necessary for school purposes of said district, and provide for the purchase thereof; provided, further, that notice of the meeting at which said resolution is to be considered for final adoption and of the proposed passage of said resolution shall be given as provided by law for notices of election of trustees, at which meeting the electors of said district shall have the right to be present and to protest the passage of said resolution. If at the hearing on such resolution protests against the adoption of the same shall be made and the board of trustees shall adopt the same over such protests, the resolution shall not become effective for fifteen (15) days after the date of its adoption, during which time any taxpayer or taxpayers may appeal to the district court by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the clerk or secretary of the board of trustees. Said petition shall set forth in detail the objections of the petitioners to the adoption of such resolution or to the purchase of the property as provided for in said resolution. The service and filing of said petition shall operate to stay such resolution until final determination of the matter by the court. Upon the filing of such petition the court shall immediately fix a time for hearing the same which shall be at the earliest convenient time. At such hearing the court shall bear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination shall be final.

3. In the case of a county high school, to employ for a period of not exceeding two (2) years some person as principal of the county high school who shall possess the qualifications required of a district superintendent of schools and who shall have charge of the county high school and whose tenure shall be the same as that of a district superintendent, except that the term shall be two (2) years instead of three (3).

4. In the case of a district high school, to employ for a period of not exceeding three (3) years some person as district superintendent and/or principal of schools who shall possess the qualifications required by law and who shall have charge of the district high schools.

5. To employ such assistants and teachers upon the recommendation of the county high school principal or district superintendent or principal as the board may deem necessary for the proper conduct of the school, provided, however, that the assistants and

teachers employed shall be possessed of the qualifications prescribed by the state board of education.

6. To fix the salaries and compensation to be paid to the principal or district superintendent and assistants and teachers employed.

7. To adopt on the recommendation of the county high school principal or district superintendent or principal such courses of study as will adequately and properly fit the graduates of the high school for admission to any of the state institutions of higher education or any other course of study approved by the state board of education, provided, however, that such courses of study shall in any event conform to the standards prescribed by the state superintendent of public instruction under section 1262.71.

8. To admit to the high school without payment of tuition any pupil residing within the county and eligible for admission to high school under the rules and regulations of the state board of education.

9. To admit to the high school without payment of tuition any pupil residing in another county whose attendance is authorized under section 1262.81; but nothing herein contained shall be construed as denying the right of the board in a proper case to demand and enforce the payment of the sums specified in section 82 [1262.82] above.

10. In its discretion to admit to the high school any pupil residing in another county whose transfer is not authorized by section 1262.81 upon the payment of such tuition as the board may fix, subject to any restrictions otherwise imposed by law, and provided that such pupil is eligible for admission to high school under the rules and regulations of the state board of education. But no such pupil shall be admitted to the high school or permitted to continue in attendance thereat to the exclusion of pupils residing in the county wherein the high school is located.

11. To provide by contract, purchase, or otherwise, for free text books and all necessary and requisite school supplies, furniture, furnishings and equipment, for the repair of high school buildings and property, and for other needs of the high school, including dormitories and gymnasiums, grounds, faculty or school board, but subject at all times to the restrictions imposed by subdivision 2 of this section, or otherwise by law.

12. To rent, lease and let to such persons and entities as the board may deem proper the high school halls, gymnasiums, buildings, and parts thereof, for such time and rental as the board may designate, and to pay over to the county treasurer all sums collected on

account of such letting for the credit of the high school.

13. To close the high school at its discretion during the annual session of the state teachers' association and to allow the principal or district superintendent and teachers to attend such annual session without loss of salary.

14. To make such reports from time to time as the county superintendent of schools, the state superintendent of public instruction or the state board of education may require.

15. To equip, operate and maintain a high school dormitory or dormitories, for the use of the teachers and/or pupils of the school; to employ a suitable matron to take charge of, direct and supervise any such dormitory and such other employees as may be necessary; and to set aside out of the general funds of the high school a sum not exceeding one hundred dollars (\$100.00), to be designated as the dormitory petty cash fund, which shall be placed at the disposal of the matron for the purpose of paying incidental petty expenses necessarily incurred from time to time in the operation of the dormitory, and to replenish such fund as the same may become exhausted, provided, however, that the matron shall keep an accurate and detailed account of her administration of the dormitory petty cash fund in such form as the state examiner may prescribe, and shall take proper receipts covering every disbursement made by her from such fund, and provided further that no single account or item paid by her out of the said fund shall exceed in amount ten dollars (\$10.00).

16. To transact all business, to make and execute all contracts, to acquire, hold and dispose of all property, whether real or personal, in the name of the county or school district, as the case may be; and generally to have, possess, exercise and enjoy all powers and authority necessary to execute the specific powers, and to discharge the particular duties hereinbefore conferred and imposed upon the board; but nothing contained in this section shall be deemed or construed to confer any power or authority upon any board contrary to the provisions of sections 1016 and 4447, in any case where the provisions of these sections, or either of them, would otherwise be applicable. [L. '39, Ch. 207, § 1, amending R. C. M. 1935, § 1262.83. Approved and in effect March 17, 1939.

Section 2 repeals conflicting laws.

1936. The powers and duties vested in state board of education and the superintendent of public instruction, on the one hand, and the local board of school trustees, on the other, are supreme so long as each body acts within the law in its respective sphere

and does nothing arbitrarily or capriciously. State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 P. (2d) 48.

1262.99a. Vocational training centers—certain high schools—designation. The state board for vocational education may, upon the application of the board of trustees of any district high school, county high school, or high school district, maintaining a vocational training department with facilities for additional enrollment in such department, designate such high school as a vocational training center. [L. '39, Ch. 160, § 1. Approved and in effect March 11, 1939.

1262.99b. Same — branches of training included. Vocational education shall include those branches of training for which the federal government by any act of congress is, or may be authorized to compensate the states for promoting vocational education in agriculture, home economics, the trades and industries, distributive occupations, aeronautics, and the commercial branches. [L. '39, Ch. 160, § 2. Approved and in effect March 11, 1939.

1262.99c. Same—admission—eligibility and procedure. Vocational training centers designated by the state board for vocational education shall admit for training, on a non-tuition basis, any resident of the state of Montana, between the ages of 16 and 21 years, provided that any such resident of the state, residing out of the county wherein a vocational center is located, shall make application for admission to training on or before the first day of June of the school year preceding the opening of the next school year. Notice of the acceptance or rejection of such applicant shall be given by the local authority of the training center on or before the first of July, following receipt of the application. Notice of the acceptance of the applicant shall be presented to the county superintendent of schools and the board of county commissioners of the applicant's residence on or before the 15th day of July. [L. '39, Ch. 160, § 3. Approved and in effect March 11, 1939.

1262.99d. Same — attendance — persons residing in another county. When attendance of any eligible person between the ages of 16 and 21 years at a designated vocational training center, outside of the county of his residence, is authorized, as provided in section 3 of this act, the board of county commissioners of the county of such residence must forthwith direct the county treasurer to pay from the high school transfer fund to the board of trustees of the school district, high school district or county high school designated as a vocational training center at which attend-

ance has been authorized the sum of fifty cents (50c) per day for each and every day of attendance at the time of the June apportionment, provided that attendance for less than thirty-five days shall not be counted, and further provided that the total amount apportioned for each attendant for each school year shall not exceed the sum of \$90.00. The names of all applicants entitled to admission to the training center who are residents of the county wherein such center is located, shall be added to the list of those eligible to be counted for high school attendance. [L. '39, Ch. 160, § 4. Approved and in effect March 11, 1939.]

1262.99e. Same—admission—rules and regulations. Rules and regulations governing admission of all applicants to vocational training centers shall be promulgated by the state board for vocational education, and shall be applied uniformly to all applicants. [L. '39, Ch. 160, § 5. Approved and in effect March 11, 1939.]

1262.99f. Same—same—adults—tuition fees. Applicants who have passed their 21st birthday may be admitted to designated vocational training centers upon the payment of a tuition, the amount of such tuition shall be fixed by the state board for vocational education. [L. '39, Ch. 160, § 6. Approved and in effect March 11, 1939.]

1262.99g. Same—materials and equipment—fees for use of. Fees for the use of equipment and material used in training may be charged by the board of trustees of the vocational training center. [L. '39, Ch. 160, § 7. Approved and in effect March 11, 1939.]

Section 8 repeals conflicting laws.

CHAPTER 118

HIGH SCHOOL BUDGET SYSTEM

Section

1263.5. Budget meeting—restriction on appropriations—maximum allowance per pupil—extra levy—computation of attendance.

1263.8. Budgeting for students attending high school outside of county or placed in state institutions—adoption and approval of budget.

1263.5. Budget meeting—restriction on appropriations—maximum allowance per pupil—extra levy—computation of attendance. The board of trustees of every district maintaining a high school and of every county high school, shall meet at the regular place of meeting of the board on the second Monday in June and consider, prepare and adopt a preliminary budget for the next ensuing school year for all high school purposes, and any taxpayer

may appear at such meeting and be heard in regard to the preliminary budget. Such meeting may be continued from day to day, but not exceeding three (3) days in all for third class high school district, or five (5) days in all for first and second class high school districts and county high schools. The total amount appropriated in Part I of the preliminary budget for any high school shall not exceed the total amount of estimated receipts for the general fund of such high school, as set out in the county superintendent's estimate of high school revenues, contained in the budget form, and the total amount appropriated in Part I of the preliminary budget for any high school shall not, in any event, exceed per eligible pupil enrolled and in regular attendance for forty (40) days or more, during the then current high school year in which the preliminary budget is adopted, the following maximums: (a) For a school enrolling sixty (60) or fewer pupils the budget shall not exceed one hundred seventy-five dollars (\$175.00) for each such pupil. For a school enrolling more than sixty (60) pupils the maximum of one hundred seventy-five dollars (\$175.00) shall be decreased at the rate of twenty-five cents (\$0.25) for each such additional pupil until the number enrolled shall have reached a total of one hundred sixty (160) such pupils. For a school enrolling more than one hundred sixty (160) pupils the maximum of one hundred fifty dollars (\$150.00) shall be decreased at the rate of fifteen cents (\$0.15) for each such additional pupil until the number enrolled shall have reached two hundred sixty (260) such pupils. For a school enrolling more than two hundred sixty (260) pupils the maximum of one hundred thirty-five dollars (\$135.00) shall be decreased at the rate of ten cents (\$0.10) for each such additional pupil until the total number enrolled shall have reached three hundred sixty (360) such pupils. For a school enrolling more than three hundred sixty (360) pupils the maximum of one hundred twenty-five dollars (\$125.00) shall be decreased at the rate of five cent (\$0.05) for each such additional pupil until the total enrollment shall have reached five hundred sixty (560) such pupils. For a school enrolling more than five hundred sixty (560) pupils the maximum shall not exceed one hundred fifteen dollars (\$115.00) for each such pupil provided that the maximum per pupil for all pupils enrolled shall be figured on the basis of the amount allowed herein on account of the last enrolled eligible pupil; provided further that nothing herein shall be construed to limit the expenditure of any and all amounts received as tuition and from other

states and counties for non-resident pupils in addition to all other expendible income budgeted for. (b) In districts where an application to establish a high school or high schools has been approved by the state superintendent of public instruction, the maximum for the first year shall be the same as that provided for under subdivision (a) of this section; provided further, that nothing herein contained shall be construed as preventing any school district from voting upon itself an additional levy for high school purposes, in accordance with the general school laws pertaining to the voting of additional levies by school districts. For the purpose of ascertaining and determining the number of pupils enrolled and in regular attendance for forty (40) days or more, for all the purposes of this act, there shall be excluded all pupils over the age of twenty-one (21) years, all pupils who have been graduated from a four (4) year accredited high school, and all pupils enrolled in the school who are not resident of the county in which the high school is located. [L. '39, Ch. 166, § 1, amending R. C. M. 1935, § 1263.5. Approved and in effect March 15, 1939.

Section 2 repeals conflicting laws.

1263.8. Budgeting for students attending high school outside of county or placed in state institutions—adoption and approval of budget. In counties where students attend a high school outside of the county of their residence, as provided in section 1262.81, or have been placed in a state institution, it shall be the duty of the county superintendent of schools, on or before the third Monday in July, to prepare a budget for an amount equal to the average amount budgeted per eligible high school pupil for maintenance and operating purposes, for all high schools with the county in which the pupil resides, in their annual final budgets for the school year immediately preceding, for each student whose attendance outside of his county has been authorized, or who is an inmate of a state institution. Such average amount per pupil shall be ascertained and determined by the county superintendent who shall divide the total amount budgeted for all eligible high school pupils within the county for maintenance and operating purposes during the preceding school year by the total number of high school pupils eligible for budgeting purposes for such year, as provided in section 1263.5 and as such amounts and number of eligible pupils are shown by such high school budgets for such year; provided that the payment of tuition for pupils attending school in another state shall be in an amount per pupil which is the same as paid by such state for pupils attending like schools

in Montana; provided further that the number of transfer pupils used for budgeting purposes shall be the number whose attendance was duly authorized by law for the year next preceding. Immediately after such budget has been prepared the county superintendent of schools preparing the same shall give written notice to the county superintendent of schools of each county in which any high school student has been authorized to attend high school under the provisions of said section 1262.81, which notice shall contain the name of each such student, the high school the student has been authorized to attend, and the amount budgeted for each such student under the provisions of this section. Each county superintendent receiving any such notice shall, at the time of laying the preliminary high school budgets before the board of school budget supervisors of the county, also lay before the board all such notices received by such county superintendent. The board of school budget supervisors, when adopting and approving the final budget of a high school which any such student from outside of the county has been authorized to attend, as shown by such notice, or notices, shall add to section II Part I of such budget an appropriation for such pupils from outside the county in such amounts as said notice or notices shows will be paid over to and received by such high school during the then current school year, and shall also add to section XI Part II of such budget an additional item of estimated receipts showing the amount which it is estimated such high school will receive during the year for the students named in such notice or notices. The amount received, or to be received during any year by any high school in payment for students from outside of the county attending such high school shall not be taken into account nor included nor considered in any manner whatever for the purpose of determining the maximum budget which the high school may adopt under section 1263.5. [L. '39, Ch. 217, § 5, amending R. C. M. 1935, § 1263.8. Approved and in effect March 17, 1939.

Section 6 repeals conflicting laws.

CHAPTER 119

HIGH SCHOOL DISTRICTS— PUBLIC WORKS

Section

- 1301.1. County high schools—boards of trustees—how designated—construction of public works—procedure.
- 1301.2. High school districts—county divided into—commission—duty—procedure—method.

1301.1. County high schools—boards of trustees—how designated—construction of public works—procedure. In any county having a high school the board of trustees of the county high school, if there be one, and the boards of trustees of any school districts maintaining high schools, are hereby designated as the boards of trustees of the respective high school districts established under this act.

To effectuate the purpose of this act, the board of trustees of any high school district, as herein provided for, is hereby authorized to undertake a program of public works in the construction, improvement, repair of buildings, and equipment for the same for the use of any or all high schools in such high school district. Such proceedings may be commenced by resolution upon the part of such board of trustees of such high school district of its own motion and without any petition being filed therefor. [L. '37, Ch. 16, § 1, amending R. C. M. 1935, § 1301.1. Approved and in effect February 10, 1937.]

Section 3 repeals conflicting laws.

1936. ✓ While the legislature may create and abolish school districts and change the boundaries thereof, such action is usually provided for by general laws in which the legislature formulates the policy broadly, leaving the working out of the details to designated officers. Such provisions—and of such are section 1301.1 et seq.—do not violate the provisions of the constitution against delegating legislative power to administrative officers. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

1936. ✓ Sections 1301.1 et seq. do not violate Const. Art. 5, § 36, prohibiting delegation of municipal functions. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

1936. ✓ Sections 1301.1 et seq. do not violate Const. Art. 3, § 27, due process clause. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

1936. ✓ Sections 1301.1 et seq. held valid and bonds issued thereunder held legal. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

1301.2. High school districts — county divided into — commission — duty — procedure — method. In all counties having a high school, or high schools, a commission consisting of the county commissioners and the county superintendent of schools shall at the request of any high school board of trustees in the county, divide the county into high school districts for the purpose of this act, provided that the boundaries established by said commission shall be subject to the approval of the superintendent of public instruction.

In creating such districts the commission shall give first consideration to the factor of

convenience of the patrons of the several schools. Common school districts may be grouped for the purpose of this act and when practicable high school districts shall be made up of contiguous and adjacent common school districts but the commission must take into consideration the existence or non-existence of obstacles to travel, such as mountains and rivers and existence or non-existence of highways and distances to high school. No common school districts shall be divided for the purposes of this act but must be made a part of a high school district in its entirety. [L. '37, Ch. 16, § 2, amending R. C. M. 1935, § 1301.2. Approved and in effect February 10, 1937.]

Section 3 repeals conflicting laws.

1301.3. Bonds may be issued by trustees.

1936. ✓ Bonds may be issued in a lesser amount than authorized by an election. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

1936. ✓ The right to issue bonds for the construction solely of a new high school building, whereas the question submitted to the voters at the election provided that the bonds would be issued for the improving, repairing and equipping of existing high school buildings held not to be enjoined. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

1301.4. Laws applicable to bonds.

1936. ✓ Section 1301.4 is a "reference statute," and as such falls within the rule that statutes which by reference adopt, wholly or partially, pre-existing statutes are not strictly amendatory or revisory in character, and are not obnoxious to the constitution, Art. 5, § 25. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

1301.6. Act not applicable to certain high school districts.

1936. ✓ Section 1301.6 is not violative of Const. Art. 5, § 26, since a classification according to population is reasonable, and taking the last official census as the basis for such classification provides a reasonable and workable test for inclusion within a class. State ex rel. Berthot v. Gallatin County High School District, 102 Mont. 356, 58 P. (2d) 264.

CHAPTER 122

MILITIA—COMPOSITION—ENROLLMENT —OFFICERS—GENERAL PROVISIONS

Section

1377.1. National guard—annual encampment—leave of absence—pay—vacation time—no deductions.

1377.1. National guard — annual encampment—leave of absence—pay—vacation time—no deductions. That any person who is a member of the organized national guard of the state of Montana and who is an appointee of or employee of the state of Montana, or any

of its departments, or any county or city within the state, shall be given leave of absence with pay for attending regular encampments authorized by the secretary of war of the United States for the Montana national guard while in attendance at such annual encampment, or without the time being charged against him on his annual vacation. [L. '37, Ch. 160, § 1. Approved and in effect March 16, 1937.]

Section 2 repeals conflicting laws.

CHAPTER 125

MILITIA — GENERAL PROVISIONS — MONTANA ARMORY BOARD

Section

- 1400.1. Montana state armory board—creation—personnel—vacancies.
- 1400.2. Same—nature—name.
- 1400.3. Same—organization and meetings.
- 1400.4. Same—powers of board.
- 1400.5. Same—compensation of members—expenses—vouchers.
- 1400.6. Same—objects of board.

1400.1. Montana state armory board — creation — personnel — vacancies. For the purposes herein provided there is created the Montana armory board, to consist of five members appointed by the governor, one of whom shall be designated by the governor as chairman of said board. Any vacancy in said board shall be filled by appointment in the same manner. [L. '39, Ch. 161, § 1. Approved and in effect March 11, 1939.]

1400.2. Same — nature — name. This board is hereby made a body politic and corporate, and shall have the name of "Montana armory board." [L. '39, Ch. 161, § 2. Approved and in effect March 11, 1939.]

1400.3. Same — organization and meetings. The board shall organize by selecting from its membership a secretary and treasurer, and said board may change such officers from time to time. Three members shall constitute a quorum at all meetings, provided all members have been notified of such meetings. The board shall hold its first meeting on the first Tuesday in April, 1939, and thereafter all meetings shall be held as provided by the by-laws of the board. [L. '39, Ch. 161, § 3. Approved and in effect March 11, 1939.]

1400.4. Same—powers of board. The Montana armory board shall possess all the powers as a body corporate necessary and convenient to accomplish the objects and purposes prescribed by this act, including the following,

which, however, shall not be construed as a limitation upon the general powers hereby conferred:

(a) To enter into contracts and be contracted with in any matter connected with any corporate purpose, herein defined.

(b) To borrow money and issue bonds, and to pledge any and all property and income of such board acquired or received as herein provided, to secure the payment of such bonds, and to redeem such bonds.

(c) To sue and be sued.

(d) To acquire, hold and convey real or personal property, by gift or purchase for armory purposes.

(e) To donate such property to the state of Montana if and when all debts which have been secured by such property or by the income thereof, have been paid.

(f) To purchase sites and buildings or to purchase sites and construct buildings for armory purposes, provided that the board of county commissioners of the county wherein said site or building is to be purchased or a building constructed, shall give their written approval of said purchase or construction.

(g) To execute leases of buildings and sites to the state of Montana for armory purposes, and in the event of nonpayment of any rents reserved in such leases, to execute leases thereof, to others for any suitable purpose, on such terms as the board may fix. Such leases to the state of Montana shall be subject to appropriations to be made by the legislative assembly, for the payment of rent under such leases. The rent charged the state of Montana shall not be in excess of the amount necessary for the retirement of bonds secured by the property leased to the state, and other expenses incident thereto, including cost of operation.

(h) To employ agents and employees necessary to carry out the objects and purposes of the board as herein expressed.

(i) To have and use a common seal and to alter the same at pleasure.

(j) To adopt all needful by-laws, rules and regulations for the conduct of the business and affairs of such board and for the management and use of such sites and buildings acquired for armory purposes, consistent with the objects and purposes of such board.

(k) To have and exercise all powers and be subject to all duties usually incident to boards of directors of corporations. [L. '39, Ch. 161, § 4. Approved and in effect March 11, 1939.]

1400.5. Same—compensation of members—expenses—vouchers. No members of such

board shall receive any compensation for services rendered under this act, except for necessary expenses incurred in performing duties prescribed by this act, provided that any and all expense claims shall be verified and be accompanied by vouchers and shall be approved by the chairman of said board of directors before payment. [L. '39, Ch. 161, § 5. Approved and in effect March 11, 1939.

1400.6. Same — objects of board. The objects of said board shall be to foster and build state armories in the state of Montana. [L. '39, Ch. 161, § 6. Approved and in effect March 11, 1939.

Section 8 repeals conflicting laws.

CHAPTER 126

INSANE ASYLUM

Section

- 1431. Insane person—apprehension—examination—custody—affidavit of insanity—warrant of apprehension—form—return showing service—order fixing time and place of hearing and examination.
- 1432. Witnesses—subpoena—issuance.
- 1433. Doctors—subpoenas—issuance.
- 1438. Order of confinement in asylum.
- 1439. Delivery of insane person to asylum.
- 1440. Money found on insane person—disposition.
- 1441. Physician witnesses—compensation and mileage.
- 1443. Jury trial of insanity—procedure—stay—committing custody to other than officer—bond for appearance—costs of proceedings.
- 1444. Financial worth of insane person—evidence—determination—guardianship proceedings—application of insane person's property towards maintenance.
- 1444a. Betterments for asylum—bond issue in excess of constitutional limitations—authorization—referendum.
- 1444b. Same—issuance in series—amounts—dates.
- 1444c. Same—dates, terms, and denominations of bonds.
- 1444d. Same—form of bonds.
- 1444e. Same—disposition of bonds—price.
- 1444f. Same—proceeds of bonds—disposition—purpose—disbursement.
- 1444g. Same—tax levy for payment—proceeds—disposition.
- 1444h. Same—referendum—submission—duty of secretary of state—date of submission to vote—ballots—form—canvassing of vote.
- 1444i. Same—cost of issuance, fees, commissions, compensation of architect—source of payment.

1431. Insane person—apprehension—examination—custody—affidavit of insanity—warrant of apprehension—form—return showing service—order fixing time and place of hearing and examination. Whenever it appears by affidavit to the satisfaction of a magistrate of a city or county, that any person therein

is so far disordered in his mind as to endanger health, person, or property, he must issue and deliver to some peace officer, for service, a warrant directing that such person be apprehended and taken before a judge of the district court of the county, for a hearing and examination on such charge. Such officer must thereupon apprehend and detain such person until a hearing and examination can be had, as hereinafter provided. Pending the examination and hearing, such order may be made relative to the care, custody or confinement of the alleged insane person as the judge shall see fit. At the time of the apprehension a copy of said affidavit and warrant of apprehension must be personally delivered to said person.

Such affidavit and warrant shall be in substantially the following form:

IN THE.....COURT
OF.....
COUNTY OF.....STATE OF MONTANA
AFFIDAVIT OF INSANITY

In the matter of....., an alleged insane person.

STATE OF MONTANA }
COUNTY OF..... } ss.

....., being duly sworn, deposes and says that there is now in said county, in the city or town of..... a person named....., who is insane, and is so far disordered in mind as to endanger the health, person, or the property of h.....self, or of others, and that he, at..... in said county on the..... day of....., 19....., threatened and attempted (state actions, etc.)

That by reason of such insanity, said person is dangerous to be at large:

Wherefore, affiant prays that such action may be had as the law requires in the cases of persons who are so far disordered in mind as to endanger health, person and property.

Subscribed and sworn to before me this..... day of....., 19.....

WARRANT OF APPREHENSION
IN THE.....COURT,
COUNTY OF.....
STATE OF MONTANA

In the matter of....., an alleged insane person.

The State of Montana, to any sheriff, constable, marshal, policeman, or peace officer, in this State:

The affidavit of....., having been presented this day to me, a.....(here state office or title of magistrate, e.g. police judge, justice of the peace, district judge, etc.,) in the county of....., State of Montana, from which it appears that there is now in this county, at.....a person by the name of....., who is insane, and who is so disordered in mind as to endanger h..... own health, person and property (or the person, lives and property of others), and that it is dangerous for said person to be at large;

And it satisfactorily appearing to me that said.....is insane, and so far disordered in h..... mind as to endanger health, person, and property;

Now, therefore, you are commanded forthwith to apprehend the above named person, and take h..... before a judge of the district court of the.....judicial district in and for the county of.....for a hearing and examination on the said charge of insanity.

And I hereby direct that a copy of this warrant, together with a copy of said affidavit, be delivered to said.....at the time of h..... apprehension; and I further direct that this warrant may be served at any hour of the day or night.

Witness my hand this..... day of....., 19.....

RETURN SHOWING SERVICE OF WARRANT

I hereby certify that I received the above warrant of apprehension on the..... day of.....19....., and served the said warrant by apprehending, in the county of..... on the.....day of....., 19....., the said....., alleged to be insane, and bringing h..... before....., judge of the district court of said.....county on the.....day of....., 19.....; and I further certify that I delivered a copy of said warrant of apprehension, together with a copy of the affidavit of insanity, as directed in said warrant, personally to said....., at the time of the apprehension.

He must be taken before a judge of the district court, to whom said affidavit and warrant of apprehension must be delivered to be filed with the clerk. The judge must then inform him that he is charged with being

insane, and inform him of his rights to make a defense to such charge and produce any witnesses in relation thereto. The judge must by order fix such time and place for the hearing and examination in open court as will give reasonable opportunity for the production and examination of witnesses; provided, however, that if the patient is too ill to appear in court, or if it would be detrimental to the mental or physical health of the patient, the judge may hold the necessary hearing at the bedside of the patient. Said order must be entered at length in the minute book of the court or must be signed by the judge and filed and a certified copy of the same served on such person. The judge must also order that notice of apprehension of such person and the hearing on such charge of insanity be served on such relatives of said person known to be residing in the county as the court may deem necessary or proper. [L. '39, Ch. 117, § 1, amending R. C. M. 1935, § 1431. Approved March 3, 1939.

Section 10 repeals conflicting laws.

1939. ✓ The chairman of the board of county commissioners sits in an insanity proceeding as a tribunal of very limited powers, and no presumption exists that his proceedings were regular, nor that he had jurisdiction to enter the judgment; the warrant failed to show a return of service, the transcript was filed in the district court long afterwards, not entered in the journal, and not called to the attention of the judge until the second term; the judgment of the chairman was, therefore a nullity. State ex rel. Leonidas v. Larson, Mont., 92 P. (2d) 774.

1937. ✓ The contention that since a juror was adjudged insane under sections 1431 to 1438, and committed to an insane asylum, he must be conclusively presumed to remain insane until restored to capacity under section 10415, or until obtaining a certificate under section 5685, held untenable, since an adjudication of insanity and commitment does not establish a conclusive, but a rebuttable presumption of insanity, section 5685 merely substituting for the presumption of sanity the presumption of insanity until the certificate therein provided for is obtained, and the question became one of fact as to whether the juror was competent mentally at the time of the trial. State v. Bucy, 104 Mont. 416, 66 P. (2d) 1049.

1432. Witnesses — subpoena — issuance.

When the person is taken before the judge, the judge must issue subpoenas to two or more witnesses best acquainted with said insane person, to appear before him and testify at such examination. [L. '39, Ch. 117, § 2, amending R. C. M. 1935, § 1432. Approved March 3, 1939.

Section 10 repeals conflicting laws.

1433. Doctors — subpoenas — issuance. The judge must also issue subpoenas for at least two graduates of medicine to appear and

attend such examination. [L. '39, Ch. 117, § 3, amending R. C. M. 1935, § 1433. Approved March 3, 1939.

Section 10 repeals conflicting laws.

1939.✓ The chairman of the board of county commissioners sits in an insanity proceeding as a tribunal of very limited powers, and no presumption exists that his proceedings were regular, nor that he had jurisdiction to enter the judgment; the warrant failed to show a return of service, the transcript was filed in the district court long afterwards, not entered in the journal, and not called to the attention of the judge until the second term; the judgment of the chairman was, therefore a nullity. State ex rel. Leonidas v. Larson, Mont., 92 P. (2d) 774.

1435. Physicians, duty of.

1939.✓ The chairman of the board of county commissioners sits in an insanity proceeding as a tribunal of very limited powers, and no presumption exists that his proceedings were regular, nor that he had jurisdiction to enter the judgment; the warrant failed to show a return of service, the transcript was filed in the district court long afterwards, not entered in the journal, and not called to the attention of the judge until the second term; the judgment of the chairman was, therefore a nullity. State ex rel. Leonidas v. Larson, Mont., 92 P. (2d) 774.

1437. Forms of certificates.

1939.✓ The chairman of the board of county commissioners sits in an insanity proceeding as a tribunal of very limited powers, and no presumption exists that his proceedings were regular, nor that he had jurisdiction to enter the judgment; the warrant failed to show a return of service, the transcript was filed in the district court long afterwards, not entered in the journal, and not called to the attention of the judge until the second term; the judgment of the chairman was, therefore a nullity. State ex rel. Leonidas v. Larson, Mont., 92 P. (2d) 774.

1438. Order of confinement in asylum. The judge, after such examination and certificate made, if he believes the person so far disordered in his mind as to endanger health, person, or property, must make an order that the party be confined in the insane asylum, and a copy of such order must be filed with and recorded by the clerk of the district court of the county. The clerk must also keep in convenient form an index book, showing the name, age, and sex of each person so ordered to be confined in the insane asylum, with the date of the order and the name of the insane asylum in which the person is ordered to be confined. No fees must be charged by the clerk for performing any of the duties provided for by this section or in this chapter. [L. '39, Ch. 117, § 4, amending R. C. M. 1935, § 1438. Approved March 3, 1939.

Section 10 repeals conflicting laws.

1439. Delivery of insane person to asylum. The insane person, together with the order of the judge, and the certificate of the physicians

must be delivered to the sheriff of the county, and by him must be delivered to the officer in charge of the insane asylum. The superintendent or person in charge of the state hospital for the insane may refuse to receive any person upon any order, if the papers presented do not comply with the provisions of this chapter. [L. '39, Ch. 117, § 5, amending R. C. M. 1935, § 1439. Approved March 3, 1939.

Section 10 repeals conflicting laws.

1939.✓ The chairman of the board of county commissioners sits in an insanity proceeding as a tribunal of very limited powers, and no presumption exists that his proceedings were regular, nor that he had jurisdiction to enter the judgment; the warrant failed to show a return of service, the transcript was filed in the district court long afterwards, not entered in the journal, and not called to the attention of the judge until the second term; the judgment of the chairman was, therefore a nullity. State ex rel. Leonidas v. Larson, Mont., 92 P. (2d) 774.

1440. Money found on insane person — disposition. Any moneys found on the person of an insane person at the time of arrest must be certified to by the judge, and sent with such person to the asylum, there to be delivered to the person in charge of the asylum, whose receipt therefor shall be taken by the sheriff, or other officer delivering said insane person to said asylum. If the sum exceed one hundred dollars, the excess must be applied to the payment of the expenses of said person while in the asylum. If the sum is one hundred dollars or less, it must be kept and delivered to the person when discharged, or applied to the payment of funeral expenses if the person dies at the asylum. Any balance of said one hundred dollars or less remaining in the hands of the officers of the asylum, after the death of the insane person, shall be returned to the county treasurer of the county from which said insane person was sent, and if any sum remains after paying costs of trying and transporting said insane person to the asylum, this balance shall be paid into the state treasury to the credit of the general fund. [L. '39, Ch. 117, § 6, amending R. C. M. 1935, § 1440. Approved March 3, 1939.

Section 10 repeals conflicting laws.

1441. Physician witnesses — compensation and mileage. The physicians attending each examination of an insane person are allowed five dollars and in addition his actual traveling expenses, not to exceed the sum of ten cents for each and every mile actually and necessarily traveled by said physician in attending said examination, and in returning to his home

therefrom, to be paid by the county treasurer of the county, where the examination was had, on the order of the judge.

The clerk of the district court must give to such physician a certificate, under seal, of travel and attendance, which shall entitle him to receive the amount therein stated from the county treasurer. [L. '39, Ch. 117, § 7, amending R. C. M. 1935, § 1441. Approved March 3, 1939.

Section 10 repeals conflicting laws.

1939. The chairman of the board of county commissioners sits in an insanity proceeding as a tribunal of very limited powers, and no presumption exists that his proceedings were regular, nor that he had jurisdiction to enter the judgment; the warrant failed to show a return of service, the transcript was filed in the district court long afterwards, not entered in the journal, and not called to the attention of the judge until the second term; the judgment of the chairman was, therefore a nullity. *State ex rel. Leonidas v. Larson*, Mont., 92 P. (2d) 774.

1443. Jury trial of insanity — procedure — stay — committing custody to other than officer — bond for appearance — costs of proceedings. If a person ordered to be committed, or any friend in his behalf, is dissatisfied with the order of the judge committing him, he may, within five days after the making of such order, demand that the question of his sanity be tried by a jury before the district court of the county in which he was committed. Thereupon that court must cause a jury to be summoned and to be in attendance at a date stated, not less than five nor more than ten days from the date of the demand for a jury trial.

At such trial the cause against the alleged insane must be represented by the county attorney of the county, and the trial must be had as provided by law for the trial of civil causes before a jury, and the alleged insane person must be discharged unless a verdict that he is insane is found by at least three-fourths of the jury.

If the verdict of the jury is that he is insane, the judge must adjudge that fact and make an order of commitment as upon the original hearing. Such order must be presented, at the time of commitment of such insane person, to the superintendent or person in charge of the hospital to which the insane person is committed, and a copy thereof be forwarded by such superintendent to the board of the commissioners for the insane and filed in its office.

Proceedings under the order must not be stayed, pending the proceedings for determining the question of sanity by a jury, except upon the order of a district judge, with provision made therein for such temporary care

and custody of the alleged insane person as may be deemed necessary. If the district judge, by the order granting the stay, commits the accused insane to the custody of any person other than a peace officer, he may, by such order, require a bond for his appearance at the trial. If a judge refuses to grant an application for an order of commitment of an insane person alleged to be dangerous to himself and others, if at large, he must state his reasons for such refusal, and any person aggrieved thereby may demand a trial of the question of the insanity of such accused insane, in the manner hereinbefore provided for a jury trial when demanded by or on behalf of the accused insane.

If the person sought to be committed is not a poor or indigent person, the costs of the proceedings are a charge upon his estate, or must be paid by persons legally liable for his maintenance, unless otherwise ordered by the judge. If the alleged insane person is adjudged not to be insane, the judge may, in his discretion, charge the costs of the proceedings to the person making the application for an order of commitment, and judgment may be entered against him for the amount thereof and enforced by execution. [L. '39, Ch. 117, § 8, amending R. C. M. 1935, § 1443. Approved March 3, 1939.

Section 10 repeals conflicting laws.

1444. Financial worth of insane person — evidence — determination — guardianship proceedings — application of insane person's property towards maintenance. Whenever a hearing for examination or committal is had before the judge, and the person is adjudged to be insane and ordered confined in the insane asylum, it shall be the duty of the judge before whom the hearing is had to take evidence as to the financial worth of said insane person, which evidence shall be reduced to writing and filed in the office of the clerk of the district court of the proper county, together with all orders, subpoenas, affidavits, complaints, warrants and papers used on said hearing or made by said judge, and said clerk shall enter upon the journal of the minutes of probate proceedings a record of all proceedings had, in the same manner as proceedings in probate, and if it appear from said evidence that said insane person has any means, money or property, out of which the expenses of his maintenance in the insane asylum, or any part thereof could be paid, it shall be the duty of the judge before whom hearing is had, to issue a citation to the parties in possession of his property, and to the relatives of said insane person, if any there be in the county where said insane person resided, citing them to appear and show cause

why a guardian should not be appointed for said insane person, and why said guardian should not be ordered to pay the costs of the maintenance of said insane person, or so much thereof as his means will permit, which citation shall be served and all proceedings thereunder conducted as provided by sections 10355 to 10376 of these codes, and if it appear to the court that said insane person has property that can be applied towards his maintenance, it shall be the duty of the court to make an order to that effect, stating how much of the said insane person's property shall be applied, the amount to be fixed with due regard to the proper preservation of the estate of said insane person. [L. '39, Ch. 117, § 9, amending R. C. M. 1935, § 1444. Approved March 3, 1939.

Section 10 repeals conflicting laws.

1444a. Betterments for asylum — bond issue in excess of constitutional limitations—authorization—referendum. That the legislative assembly of the state of Montana is hereby authorized and empowered to direct the state board of examiners to issue bonds in the name of the state of Montana in a sum not exceeding five hundred thousand dollars (\$500,000.00) in excess of the constitutional limitation of indebtedness and over and above any bonded indebtedness heretofore incurred or created and for which the state of Montana is now obligated, the money derived from the sale of said bonds to be used for the purpose of constructing, repairing, and equipping necessary buildings, for other permanent improvements and for acquiring necessary grounds therefor, at the Montana state insane asylum at Warm Springs, Montana. [L. '39, Ch. 168, § 1. Approved and in effect March 15, 1939.

1444b. Same—issuance in series—amounts—dates. Such bonds shall be issued in series from time to time by the state board of examiners upon the direction of the legislative assembly of the state of Montana, and at such times and in such amounts as may appear to the legislative assembly of the state of Montana in the exercise of its judgment and discretion to be for the best interests of the state and necessary for the erection, repair and equipment of necessary buildings, other permanent improvements, and acquisition of necessary grounds, at the Montana state hospital for the insane. [L. '39, Ch. 168, § 2. Approved and in effect March 15, 1939.

1444c. Same — dates, terms, and denominations of bonds. Each series of bonds provided for in this act shall be issued in such denominations as may be determined by the state board of examiners at the time the same are authorized to be issued under the provisions

of this act, and shall bear date as of the day of issuance thereof, and shall become due and payable serially over a period of not to exceed twenty (20) years from the date of issuance, and shall bear interest at the rate of not to exceed four per centum (4%) per annum, payable semi-annually on such dates as may be determined and fixed by the state of Montana; provided, however, that for each series of said bonds issued after the issuance of a first series thereof, the board of examiners shall so fix the interest paying dates that the interest thereon will become due and payable on the same date as the interest on the first series of bonds which become due and payable, and in order so to do, the state board of examiners may provide that the first interest shall be due and payable at a date less than six (6) months after the date of the issuance of such series. [L. '39, Ch. 168, § 3. Approved and in effect March 15, 1939.

1444d. Same — form of bonds. The board of examiners shall prescribe the form of such bonds and the bonds of each series shall bear upon their face the words "state insane hospital bonds of the state of Montana" with a letter or figure to designate the series thereon, and shall be signed by the members of the state board of examiners, and the great seal of the state of Montana shall be affixed to each bond and the bonds shall be registered in the office of the state treasurer. Said bonds shall have interest coupons attached thereto covering the interest due semi-annually, which coupons shall be executed with facsimile signatures of all the members of the state board of examiners and the signing of said bonds with facsimile signatures shall be recognized as sufficient execution of said coupons on behalf of the state of Montana. [L. '39, Ch. 168, § 4. Approved and in effect March 15, 1939.

1444e. Same — disposition of bonds — price. The bonds provided for in this act shall be disposed of by the state board of examiners in such manner as they shall deem for the best interests of the state and in carrying out the provisions of this act; provided, that no bond shall be disposed of for less than its par value. [L. '39, Ch. 168, § 5. Approved and in effect March 15, 1939.

1444f. Same — proceeds of bonds — disposition — purpose — disbursement. All moneys derived from the issuance and sale of the bonds authorized by this act shall be paid into the state treasury, and shall constitute a special fund for the construction, repair, and equipment of necessary buildings and other permanent improvements, and the acquisition of necessary grounds therefor at the state

hospital for the insane at Warm Springs, Montana, and shall be expended only for the construction, repair, and equipment of necessary buildings, other permanent improvements, and the acquisition of necessary grounds therefor, at said institution, and shall be disbursed by the state treasurer on warrants properly drawn against such fund by the state auditor pursuant to the orders of the state board of examiners. [L. '39, Ch. 168, § 6. Approved and in effect March 15, 1939.

1444g. Same—tax levy for payment—proceeds—disposition. There shall be levied annually upon all property of the state of Montana subject to taxation an ad valorem tax upon each dollar of the taxable valuation of such property sufficient to pay the interest accruing on said bonds as such interest shall fall due, and the payment of the bonds as they serially become due, said levy, however, not to exceed one-half ($\frac{1}{2}$) mill per annum. The tax when collected by the county treasurers of the several counties of the state shall be by them accounted to and paid into the state treasury of the state of Montana, and by the state treasurer placed in the "state insane hospital bond interest and redemption fund" which fund shall be used exclusively for the payment of principal and interest on said bonds as the same become due. [L. '39, Ch. 168, § 7. Approved and in effect March 15, 1939.

1444h. Same — referendum — submission — duty of secretary of state — date of submission to vote — ballots — form — canvassing of vote. There shall be a referendum on this act and the secretary of state is hereby required, and it is made his duty to submit this measure in accordance with section 2 of article 13 of the constitution of the state of Montana and all other provisions of the constitution and laws of the state of Montana applicable thereto to the people of the state for their approval or rejection at the general election to be held in November, 1940. The official ballot used at said election shall have printed thereon the title of this act and below the same shall be printed the words:

- ☐ For the bond issue for state insane hospital bonds.
- ☐ Against the bond issue for the state insane hospital bonds.

Each elector shall designate his preference by marking an "X" in the square below the proposition for which such elector desires to vote. The votes cast for and against the law above proposed, shall be counted, returned, and canvassed, and the results shall be determined and declared in the manner provided

by the general election laws of the state. [L. '39, Ch. 168, § 8. Approved and in effect March 15, 1939.

1444i. Same — cost of issuance, fees, commissions, compensation of architect — source of payment. The cost of the bonds issued under this act, fees, commissions, and compensation of the architect employed in the construction and to prepare plans shall be paid out of the proceeds of the bonds. [L. '39, Ch. 168, § 9. Approved and in effect March 15, 1939.

Section 10 is partial invalidity saving clause.

Section 11 repeals conflicting laws.

CHAPTER 129

MONTANA SCHOOL FOR THE DEAF AND BLIND

Section

- 1473.1. School transferred to Great Falls—staff—equipment—board of education—duties.
- 1473.2. Name changed—how conducted—board of education—local executive board.
- 1473.3. Rules and regulations — students — qualifications for admittance — superintendent — teachers—control.
- 1473.4. New name for Boulder institution—operation — direction — use of old buildings — Montana State Training School.

1456. Name of school.

Note. For change of name see § 1473.2

1459. Supervision and control.

Note. See, also, § 1473.1 et seq.

1461. Regulations concerning admissions to school.

Note. See, also, § 1473.3.

1470. Powers of state board of education.

Note. See, also, § 1473.1 et seq.

1473.1. School transferred to Great Falls—staff—equipment—board of education—duties. That the state board of education is hereby instructed on or before the second Wednesday in September, 1937, to transfer the school for the deaf and blind, now being constructed at Boulder, Montana, to the new building erected for that purpose at Great Falls, Montana, and to provide the necessary staff for its operation and the required furnishings and equipment.

The equipment in the printing shop and such other equipment in the institution at Boulder, used exclusively for instructional purposes for the deaf and blind shall be transferred to Great Falls, Montana, and installed in the new school for the deaf and blind hereby created. [L. '37, Ch. 43, § 1. Approved and in effect February 23, 1937.

1473.2. Name changed—how conducted—board of education—local executive board. The new school for the deaf and blind at Great Falls, Montana, shall be known as the "Montana State School for the Deaf and Blind", and shall be conducted as a separate unit, under the direction of the state board of education, with a local executive board to be appointed by the governor. [L. '37, Ch. 43, § 2. Approved and in effect February 23, 1937.

1473.3. Rules and regulations—students—qualifications for admittance—superintendent—teachers—control. The state board of education shall prescribe rules, regulations and methods, governing the school, and the qualifications for admittance of students in conformity with present laws relating to the same and the qualifications of the superintendent and teaching staff. [L. '37, Ch. 43, § 3. Approved and in effect February 23, 1937.

1473.4. New name for Boulder institution—operation—direction—use of old buildings—Montana State Training School. The present institution at Boulder shall be known henceforth as "Montana State Training School", and shall be conducted and operated under the direction of the state board of education, with a local executive board in conformity with the present laws relative to the same, and the buildings at this institution vacated by the school for the deaf and blind shall be used for additional housing and educational facilities of Montana State Training School. [L. '37, Ch. 43, § 4. Approved and in effect February 23, 1937.

Section 5 repeals conflicting laws.

CHAPTER 129A

STATE COMMISSION FOR THE BLIND

Section

- 1473.5. Creation of a commission for the blind—duties.
- 1473.6. Personnel of commission—terms of office—appointment—compensation and expenses.
- 1473.7. Cooperation with federal government.
- 1473.8. Location of commission office—secretary and treasurer—meetings.
- 1473.9. Employees of the commission—vocational education—state supervisor for blind—blind persons—tuition and expenses during training.
- 1473.10. Duties of the commission.
- 1473.11. Definition of blindness.
- 1473.12. Cooperation of the Montana school for deaf and blind—compensation.
- 1473.13. Accounts and audit for industries.
- 1473.14. Commission may receive gifts.
- 1473.15. Purpose of act—rehabilitation.

1473.5. Creation of a commission for the blind—duties. There is hereby created a state department for the blind, to be known as the Montana state commission for the blind, hereinafter referred to as the commission, which shall be charged with the duty of promoting the welfare of blind persons by the rehabilitation and vocational training of the adult blind, in the manner hereinafter set forth. [L. '39, Ch. 42, § 1. Approved and in effect February 21, 1939.

1473.6. Personnel of commission—terms of office—appointment—compensation and expenses. The commission for the blind shall consist of five members, of which three shall be, ex-officio, the president of the Montana school for the deaf and blind; the state supervisor of rehabilitation; the administrator of the state department of public welfare, respectively; and the terms of office of the ex-officio members shall be coincident with their tenures of the aforesaid positions. The chairman of the commission shall be the president of the Montana school for the deaf and blind.

The remaining members of the commission, of whom one at least shall by preference be a blind person, shall be appointed by the governor within thirty days after the passage of this act. The full term of office of the appointed members of the commission shall be three years; but of the first commission appointed one member shall be appointed for a term of two years, one for a term of one year. At the expiration of the term of any member of the commission his successor shall be appointed for a term of three years. Any appointed member may be reappointed to succeed himself.

The members of the commission shall receive no compensation for their services, but shall be reimbursed for their traveling and other necessary expenses incurred in the performance of their official duties. [L. '39, Ch. 42, § 2. Approved and in effect February 21, 1939.

1473.7. Cooperation with federal government. The commission is hereby designated the agency of the state of Montana, to cooperate with the federal government in the administration of the Randolph-Shepherd act approved June 20th, 1936, and in the administration of any other federal acts, and shall cooperate with any departments of the state of Montana, having for their purposes the improving of the condition of the blind of the state of Montana by rehabilitation and vocational training, and said commission is empowered and authorized to apply to such federal and state departments for, and to receive from them, any benefits to which said

commission may be entitled. [L. '39, Ch. 42, § 3. Approved and in effect February 21, 1939.

1473.8. Location of commission office — secretary and treasurer — meetings. Subject to the approval of the state board of education, the commission may have its office at the Montana school for the deaf and blind, and shall within thirty days after its creation, meet and appoint a secretary, and a treasurer who shall be bonded and shall adopt all necessary rules and regulations to govern itself by, and shall proceed to carry out the purposes for which it is created. The commission shall meet not less than four times each calendar year at regular intervals which shall be determined at the first meeting. [L. '39, Ch. 42, § 4. Approved and in effect February 21, 1939.

1473.9. Employees of the commission — vocational education — state supervisor for blind — blind persons — tuition and expenses during training. The commission shall appoint a state supervisor for the blind, and such other officers as may be necessary and fix their compensation within the limits of the annual appropriation, in all cases giving preference to blind persons of equal efficiency, but no person employed by the commission shall be a member thereof. The state supervisor of the blind may establish under the supervision, and at the direction, of the commission one or more training schools and workshops for the training and employment of suitable blind persons, and shall be empowered to equip and maintain the same, to pay to employees suitable wages, and to devise means for the sale and distribution of the products thereof. The commission may also pay for tuition, lodging, support, and all necessary expenses for blind persons during their training or instruction, whenever in the judgment of the commission such training or instruction will contribute to the efficiency or self-support of such blind persons. When special educational opportunities cannot be had in this state, they may be arranged for, at the discretion of the commission, outside of the state. The commission may also aid individual blind persons or groups of blind persons to become wholly or partially self-supporting, by loaning or renting materials or machinery to them necessary to carry on their work, and may also assist them in the sale and distribution of their products; but this shall not be deemed to authorize the making of gifts by the commission. [L. '39, Ch. 42, § 5. Approved and in effect February 21, 1939.

1473.10. Duties of the commission. It shall be the duty of the commission through its

employees to maintain a complete register of the blind in the state of Montana, which shall describe the condition, cause of blindness, capacity for education, and industrial training of each, with such other facts as may seem to the commission to be of value.

The commission shall cause to be maintained by the state supervisor of the blind, one or more departments of vocational aid, the object of which shall be to aid the blind in finding employment, and to teach them trades and occupations which may be followed in their homes or elsewhere, and to assist them in disposing of the products of their home industries. [L. '39, Ch. 42, § 6. Approved and in effect February 21, 1939.

1473.11. Definition of blindness. For the purpose of this act the term of "blind person" means a person having not more than ten percentum visual acuity in the better eye with correction. Such blindness shall be certified by a duly licensed ophthalmologist. [L. '39, Ch. 42, § 7. Approved and in effect February 21, 1939.

1473.12. Cooperation of the Montana school for deaf and blind — compensation. Upon the recommendation of the president and the local executive board of the Montana school for the deaf and blind and approval of the state board of education such facilities as may be available at the Montana school for the deaf and blind in carrying out the purposes of this act may be used by the commission. The commission shall compensate the school for the deaf and blind for any services rendered and expenses incurred in its behalf at the actual cost thereof, subject to the approval of the state board of education. All such activities shall conform to rules and regulations determined by the local executive board of the school. [L. '39, Ch. 42, § 8. Approved and in effect February 21, 1939.

1473.13. Accounts and audit for industries. The commission shall keep separate books of account for its industries and may use all moneys received from sale of any products made at its workshops or from the sale of the products made under supervision to which it has title, for the purpose of carrying on its industries. The state bank examiner of Montana, or some person authorized by him, shall at least once each year and oftener if he deems it advisable, examine the books, accounts and vouchers of the commission. [L. '39, Ch. 42, § 9. Approved and in effect February 21, 1939.

1473.14. Commission may receive gifts. The commission shall have authority to receive any donations, grants, or gifts of property.

real or personal, from any source whatsoever, provided said donations, grants, or gifts shall be for the carrying out of the purposes of this act. [L. '39, Ch. 42, § 10. Approved and in effect February 21, 1939.

1473.15. Purpose of act — rehabilitation. It is hereby declared that it is the purpose of this act to establish an adequate state system for the rehabilitation and vocational training of the adult blind of the state of Montana under the direct supervision of the commission of the blind to take advantage of any federal or state aid granted for the rehabilitation and vocational training of the blind. [L. '39, Ch. 42, § 11. Approved and in effect February 21, 1939.

Section 12 is partial invalidity saving clause.

Section 13 repeals conflicting laws.

CHAPTER 130

TRAINING SCHOOL FOR FEEBLE-MINDED PERSONS

1474. Establishment of training school.

Note. See, also, § 1473.4.

CHAPTER 132

TUBERCULOSIS SANITARIUM

Section

1525.1. Additions to sanitarium — construction — authorization to board of examiners—cost—fund.

1525.2. Revenue bonds—authority to issue.

1525.3. Amount of bonds—payment—sinking fund.

1525.4. Emergency—declaration.

1525.5. Powers of board confirmed — execution authorized and directed.

1525.1. Additions to sanitarium — construction — authorization to board of examiners — cost — fund. The state board of examiners, hereinafter in this act termed the board, is hereby authorized and empowered to construct additions and improvements to the Montana state tuberculosis sanitarium, the cost of such construction to be paid wholly by means of or with the proceeds of the revenue bonds hereinafter described and the other funds provided under the authority of chapter 22, laws of Montana, extraordinary session, 1933-1934. [L. '39, Ch. 31, § 1. Approved and in effect February 16, 1939.

1525.2. Revenue bonds — authority to issue. That the board be and it hereby is authorized to provide by resolution for the issuance of revenue bonds in the aggregate principal amount of not exceeding fifty-one thousand dollars (\$51,000.00), for the purpose of paying

the cost of the construction of such additions and improvements, said revenue bonds constituting the unissued revenue bonds authorized by chapter 22, laws of Montana, extraordinary session, 1933-1934. [L. '39, Ch. 31, § 2. Approved and in effect February 16, 1939.

1525.3. Amount of bonds — payment — sinking fund. Said revenue bonds in the aggregate principal amount of not exceeding fifty-one thousand dollars (\$51,000.00), shall be executed, issued, sold and delivered in accordance with the terms of said chapter 22, laws of Montana, extraordinary session, 1933-1934, and shall be payable from the sinking fund created by the board in accordance with the terms of said act. [L. '39, Ch. 31, § 3. Approved and in effect February 16, 1939.

1525.4. Emergency — declaration. It is hereby determined that the emergency declared to exist by section 8 of said chapter 22, laws of Montana, extraordinary session, 1933-1934, does still exist by reason of the economic depression which has caused unemployment and consequent indigence and dependency of a large portion of the people of this state, and in that the Montana state tuberculosis sanitarium is not able to care for a large number of patients who should be admitted thereto, and that the construction of additions and improvements to the said Montana state tuberculosis sanitarium will be conducive to the welfare of the state, the relief of the unemployed and destitute, and the public health, safety, convenience and welfare of the people. [L. '39, Ch. 31, § 4. Approved and in effect February 16, 1939.

1525.5. Powers of board confirmed — execution authorized and directed. The powers heretofore conferred upon the state board of examiners under and by virtue of chapter 22, laws of Montana, extraordinary session, 1933-1934, are hereby confirmed, and their present execution is hereby authorized and directed. [L. '39, Ch. 31, § 5. Approved and in effect February 16, 1939.

Section 6 repeals conflicting laws.

CHAPTER 134

STATE LIBRARY — LAW LIBRARY — HISTORICAL SOCIETY OF MONTANA

Section

1556. Library funds.

1569. Assistant law librarian—duties—salary.

1556. Library funds. The fund of the law library department of the state library consists of fifty per cent. of all fees collected and paid into the state treasury by the clerk of

the supreme court, and any appropriations especially made for this department by the legislative assembly; if any part of said fund be not expended in any year, said balance shall not be covered back in the general fund at the end of the fiscal year, but the same shall be reserved and set apart as a surplus fund for the purchase of books for the law library, and the board of trustees of the law library department of the state library is hereby empowered and authorized to draw from the state treasury, at any time when needed for the purchase of additional books, any moneys belonging to said surplus fund. The fund of the historical and miscellaneous department of the state library consists of the receipts from the sale of any of its publications authorized to be sold, and of any appropriations especially made in its behalf by the legislative assembly. [L. '39, Ch. 156, § 2, amending R. C. M. 1935, § 1556. Approved and in effect March 11, 1939.]

Section 3 repeals conflicting laws.

1569. Assistant law librarian — duties — salary. To carry out the provisions of this act, the librarian of the law department of the state library is hereby authorized and empowered to employ an assistant who shall, in addition to the duties imposed by the provisions of this chapter, act as a law clerk for the justices of the supreme court and shall perform any and other duties prescribed by the supreme court. The salary shall be fixed at that figure the board of trustees of the state law library shall deem reasonable, provided, however, that the salary per annum shall not exceed twenty-four hundred dollars (\$2400.00). [L. '39, Ch. 38, § 5, amending R. C. M. 1935, § 1569. Approved and in effect February 21, 1939.]

Section 6 repeals conflicting laws.

CHAPTER 134A

SCIENCE COMMISSION OF MONTANA

Section

- 1575.3. Science commission created — personnel — rules and regulations.
- 1575.4. Historic structures — declaration as state monuments.
- 1575.5. Archaeological sites — permits to examine and excavate — qualifications of applicants — disposition of specimens.
- 1575.6. Objects collected — depository — designation.
- 1575.7. Scientific material — exportation — permits.
- 1575.8. Injury or destruction of historic material — penalty — enforcement of act — duty.

1575.3. Science commission created — personnel — rules and regulations. There is hereby created a body to be known as the

science commission of Montana, which shall be composed of the following heads of the state educational and scientific institutions, viz: The presidents of the university of Montana, the Montana state agricultural college, the Montana state school of mines, the normal schools of Montana, the librarian of the historical library at Helena, and the state superintendent of public instruction. Said commission by and with the advice and consent of the commissioner of state lands shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this act and shall perform all the duties prescribed herein without pay. [L. '39, Ch. 78, § 1. Approved and in effect February 28, 1939.]

1575.4. Historic structures — declaration as state monuments. That the commissioner of the state land office is hereby authorized on recommendation of the science commission of Montana with the approval of the commissioner of public lands to declare by public proclamation that historic and prehistoric structures and other objects of scientific interest that are situated upon the lands owned or controlled by the state of Montana, shall be state monuments, and may reserve as a part thereof such parcels of land as may be necessary to the proper care and management of the objects to be protected. [L. '39, Ch. 78, § 2. Approved and in effect February 28, 1939.]

1575.5. Archaeological sites — permits to examine and excavate — qualifications of applicants — disposition of specimens. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity, or general scientific interest, may be granted by the commissioner of public lands on recommendation of the science commission of Montana to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as the aforesaid commission with the approval of the commissioner of public lands may prescribe: Provided, that the examinations and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view of increasing the knowledge of such subjects, and: Provided, that not less than fifty per cent of all specimens so collected by non-resident institutions shall be retained as the property of the state of Montana, unless the commissioner of public lands shall expressly accept a smaller proportion, as meeting the requirements of this act, and: Provided, that

this act shall not interfere with the making of natural history collections by individuals, for scientific purposes only, provided that such individuals secure permits as prescribed in this section. [L. '39, Ch. 78, § 3. Approved and in effect February 28, 1939.

1575.6. Objects collected — depository — designation. Unless other locations be designated by the commission, the historical society of Montana shall be the depository for all collections made under the provisions of this act and shall distribute material from such collections to any museum throughout the state of Montana, on request of the governing bodies of the said local museums, when in the opinion of the science commission, proper arrangements are made for the safe custodianship and public exhibition of such material. [L. '39, Ch. 78, § 4. Approved and in effect February 28, 1939.

1575.7. Scientific material — exportation — permits. The disposition of historic and scientific material referred to in this act, to individuals or institutions outside the state of Montana, is expressly forbidden, except by permission of the science commission, approved by the commissioner of public lands, and the transportation by public or private carriers of such material to points outside the state of Montana, is expressly prohibited, except as may be necessary in carrying out the provisions of the permits issued by the government of the United States under the federal statute for the preservation of American antiquities, and under the permits granted by the science commission of the state of Montana. [L. '39, Ch. 78, § 5. Approved and in effect February 28, 1939.

1575.8. Injury or destruction of historic material — penalty — enforcement of act — duty. That any person who shall appropriate, excavate, injure or destroy any historic or prehistoric ruin or monument, or any object of historical, archaeological or scientific value, situated on lands owned or controlled by the state of Montana, or its institutions, without the recommendation of the science commission of Montana and the consent of the commissioner of the state land office, shall be fined in a sum of not more than five hundred dollars (\$500.00) or be imprisoned for a period of not more than ninety (90) days, or shall suffer both fine and imprisonment in the discretion of the court; and it shall be the duty of any employee of the state land office, or any peace officer, including constables and sheriffs, to proceed against any violation of this law, and the duty of county attorneys of this state to prosecute anyone violating the

provisions of this act. [L. '39, Ch. 78, § 6. Approved and in effect February 28, 1939.

Section 8 repeals conflicting laws.

CHAPTER 140

HIGHWAYS — DEFINITIONS AND CLASSIFICATIONS

1612. Public highway defined.

1937. Section 1788 says nothing about the highway commission co-operating with the county boards in laying out or building new state highways, but only co-operation for the improvement of public roads, and the reference in section 1612 to "public roads" obviously means roads then built and in use in the several counties. State ex rel. State Highway Commission v. District Court, 105 Mont. 44, 69 P. (2d) 112.

1936. ✓ In action to enjoin obstruction of a road, evidence held insufficient to warrant the trial court in finding that the road in question was a public road by prescription or user. Peasley v. Trospen, 103 Mont. 401, 64 P. (2d) 109.

1936. ✓ A road across Indian land that has not been opened in accordance with sections 1635-1651 by the highway authorities is not a public road the obstruction of which may be enjoined by an adjoining landowner. Peasley v. Trospen, 103 Mont. 401, 64 P. (2d) 109.

CHAPTER 141

ROAD TAXES AND BONDS

1617. Road tax levy—general road tax.

1939. ✓ The fact that the legislature exempted city property from the payment of the five mill levy did not obligate it to make the same exemption as to any tax in excess of the five mill levy. It is no more double taxation for city property to bear its share of a levy in excess of five mills, than it is for county property outside of a city. State ex rel. Siegfried v. Carbon County et al., Mont., 92 P. (2d) 301.

1939. ✓ Property in a city may be taxed for the construction and maintainance of highways situated wholly outside of its corporate limits, but within the taxing district of which it is a part. State ex rel. Siegfried v. Carbon County et al., Mont., 92 P. (2d) 301.

CHAPTER 142

SUPERVISION OF PUBLIC HIGHWAYS

1622.1. County surveyor's duties in counties having total registered vote of fifteen thousand or over at last general election — salary.

1937. ✓ The phrase "registered vote," in section 1622.1, means voters who were registered and entitled to vote at the last general election, as distinguishable from voters who actually voted thereat. State ex rel. Durland v. Board of County Commissioners, 104 Mont. 21, 64 P. (2d) 1060.

1937. ✓ In mandamus by county surveyor against county commissioners to enforce payment of his salary in accordance with the statute, he was awarded a reasonable attorney's fee of \$200 chargeable against the county. State ex rel. Durland v. Board of County Commissioners, 104 Mont. 21, 64 P. (2d) 1060.

CHAPTER 143

ESTABLISHING, ALTERING, AND VACATING OF PUBLIC HIGHWAYS

Section

1651.1. Stock lane law—title of act.

1651.2. Stock lane defined—width.

1651.3. Stock lanes—laws applicable to—eminent domain.

1651.4. Stock lanes—establishment, altering, and vacating—powers of county commissioners—location.

1635. Petition by freeholders to establish, change, or discontinue.

1936. ✓ In order to establish a road across Indian lands after securing the consent of the superintendent of the agency, it is necessary for the county or state authorities seeking to establish the road to proceed under the state statutes for the opening and laying out the road, unless a road has been established by user. Peasley v. Trosper, 103 Mont. 401, 64 P. (2d) 109.

1936. ✓ In action to enjoin obstruction of a road, evidence held insufficient to warrant the trial court in finding that the road in question was a public road by prescription or user. Peasley v. Trosper, 103 Mont. 401, 64 P. (2d) 109.

1639. Opening of highway—survey of same—claims for damages.

1936. A road across Indian land that has not been opened in accordance with sections 1635-1651 by the highway authorities is not a public road the obstruction of which may be enjoined by an adjoining landowner. Peasley v. Trosper, 103 Mont. 401, 64 P. (2d) 109.

1651.1. Stock lane law—title of act. This act shall be known as the "Stock Lane Law." [L. '39, Ch. 63, § 1. Approved and in effect February 27, 1939.

1651.2. Stock lane defined—width. Within the meaning of this act a stock lane shall be deemed to be a public highway established and maintained for the driving of and travel of livestock thereon. The width of such highway shall be determined by the order or orders of the county commissioners creating the same and shall be not less than sixty (60) feet in width. [L. '39, Ch. 63, § 2. Approved and in effect February 27, 1939.

1651.3. Stock lanes—laws applicable to—eminent domain. The provisions of sections 1635 to 1651 inclusive of the revised codes of Montana, 1935, and the general laws of this

state relating to the establishing, altering and vacating of public highways including the right of exercise of the power of eminent domain shall likewise apply to stock lanes except that such highways in all petitions, orders and proceedings shall be referred to as "stock lanes" to differentiate them from other highways. [L. '39, Ch. 63, § 3. Approved and in effect February 27, 1939.

1651.4. Stock lanes—establishment, altering, and vacating—powers of county commissioners—location. The power to establish, alter or vacate stock lanes shall belong exclusively to the county commissioners of the respective counties, to be exercised when they deem it expedient and necessary for the convenience of the public, and when they deem it to be for the convenience of the travel of the public on highways now established. Any such lane established may adjoin and parallel a public highway and shall be described in the petition for the creation of and the order of the county commissioners creating the same. [L. '39, Ch. 63, § 4. Approved and in effect February 27, 1939.

Section 5 repeals conflicting laws.

CHAPTER 144

SPECIAL ROAD DISTRICTS

Section

1652 to 1675. Repealed.

1675.1. Special road districts abolished.

1675.2. Property and liabilities—transfer to county.

1652 to 1675. Repealed. [L. '39, Ch. 35, § 2. Approved February 17, 1939. In effect June 30, 1939.

Section 4 repeals conflicting laws.

1675.1. Special road districts abolished. All special road districts are hereby dissolved, disincorporated, and abolished. [L. '39, Ch. 35, § 1. Approved February 17, 1939. In effect June 30, 1939.

Section 4 repeals conflicting laws.

1675.2. Property and liabilities—transfer to county. All property—funds or accruing funds—shall become the property of the county, and all funds shall be transferred to the county general road fund; and all legal liabilities of said special road district shall become the liability of the county. [L. '39, Ch. 35, § 3. Approved February 17, 1939. In effect June 30, 1939.

Section 4 repeals conflicting laws.

CHAPTER 147

GUIDE-BOARDS

1716. Size and fastening of guide-boards.

1938. Under a will conferring on the testator's wife a life estate with full power to use any part of the principal that she might desire but that she might not make any disposition of the remainder, she had the power to hire a bookkeeper to take charge of her own property, but could not use any of the life estate to make betterments and repairs on her own property. In re Yergy's Estate, 106 Mont. 505, 79 P. (2d) 555.

1717. Maliciously removing or injuring guide-boards.

1938. Under a will conferring on the testator's wife a life estate with full power to use any part of the principal that she might desire but that she might not make any disposition of the remainder, she had the power to hire a bookkeeper to take charge of her own property, but could not use any of the life estate to make betterments and repairs on her own property. In re Yergy's Estate, 106 Mont. 505, 79 P. (2d) 555.

CHAPTER 150

MONTANA HIGHWAY PATROL

Section

- 1741.4. Supervisor — term — salary — powers — residence.
- 1741.5. Assistant supervisors—patrolmen—qualifications—salary—training—probation.
- 1741.5-1. Personnel—tenure of office—suspension—demotion — discharge — causes — charges — hearing — notice — suspension pending decision—authority to hear charges — board — witnesses — attendance — punishment — reinstatement — salary.
- 1741.6. Equipment for patrolmen—furnished by board—of what to consist.
- 1741.7. Users of highways—acts constituting crimes enumerated.
- 1741.8. Penalties—warning cards—fines—imprisonment — reckless driving — driving while intoxicated — prohibition of driving — appeal — bail forfeiture — costs — civil actions.
- 1741.9. When arrest by patrolmen allowed — forbidden to act in labor disputes or congregate to preserve peace in one county —empowered to stop vehicles transporting livestock and livestock products.
- 1741.10. Patrolman's duty on making arrest—justice of peace's fees.
- 1741.11. Driver's license required—time to procure —fee—driving by person under 15—permission.
- 1741.11-1. Definitions.

1741.4. Supervisor — term — salary — powers—residence. The highway patrol supervisor shall hold his office until his appointment has terminated for cause, as hereinafter set forth, and shall receive a salary of not less than three thousand dollars (\$3000.00) nor

more than thirty-four hundred dollars (\$3400.00) per annum, and necessary traveling expenses. The supervisor shall have direct control and supervision of all patrolmen, subject to the approval of the Montana highway patrol board. The person named as supervisor shall have been a continuous resident of Montana for at least five (5) years. [L. '37, Ch. 182, § 1, amending R. C. M. 1935, § 1741.4. Approved March 18, 1937. In effect May 17, 1937.

1741.5. Assistant supervisors — patrolmen — qualifications — salary — training — probation. The board shall designate and name assistant supervisors, not to exceed four (4) in number, and patrolmen in such numbers as may be justified from the fund hereinafter to be provided. Said patrolmen shall be chosen in equal numbers in the twelve (12) highway districts. Replacements and additions to the force shall be selected in the same manner, but in no event shall the salaries and expenses of patrolmen ever exceed the amount hereinafter provided in the state highway patrol revolving fund. Assistant supervisors shall be selected from the patrolmen by the supervisor subject to the approval of the highway patrol board. The assistant supervisors' duties and jurisdiction shall be outlined, defined and under the control of the supervisor, subject to the approval of the Montana highway patrol board. Patrolmen shall possess the following qualifications:

1. Sound and active physical condition.
2. Good moral character.
3. Between the ages of twenty-four (24) and fifty-five (55) at the time of entering the service.
4. Resident of Montana for at least five (5) years past.
5. Pass a satisfactory test in the operation of both automobiles and motorcycles.
6. Not over fifty-five (55) per cent of the patrol shall belong to one political party.

The initial salary of patrolmen shall be one hundred twenty-five dollars (\$125.00) per month, but the same may be increased at the discretion of the board not to exceed one hundred sixty dollars (\$160.00), together with actual traveling expenses, for merited service in the patrol. The initial salary of the assistant supervisors shall be one thousand nine hundred and twenty dollars (\$1920.00) per annum, but the same may be increased, at the discretion of the board not to exceed twenty-eight hundred dollars (\$2800.00) per annum for merited service in the patrol and actual traveling expenses. All patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1)

year, during which time the highway patrol supervisor must recommend to the highway patrol board for permanent appointments or the patrolmen will automatically be dismissed; otherwise, they shall hold their permanent appointments while there are sufficient funds in the department. [L. '37, Ch. 182, § 2, amending R. C. M. 1935, § 1741.5. Approved March 18, 1937. In effect May 17, 1937.]

1741.5-1. Personnel — tenure of office — suspension — demotion — discharge — causes — charges — hearing — notice — suspension pending decision — authority to hear charges — board — witnesses — attendance — punishment — reinstatement — salary. Every person employed or appointed and designated as a supervisor, assistant supervisor or patrolman under and pursuant to the provisions of this law, and acts amending it, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one or more of the causes specified in the following paragraph. Causes for suspension, demotion, or discharge shall be:

1. Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.
2. Gross neglect of duty or wilful violation or disobedience of orders or regulations.
3. Gross inefficiency in performing duties.
4. Conduct unbecoming an officer.
5. Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.
6. Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate.

The charge or charges against any such employees shall be made in writing and shall be signed and sworn to by the person making the same, which written charge or charges shall be filed with the supervisor of the Montana highway patrol. Any charges involving suspension or dismissal of the supervisor or an assistant supervisor shall be filed directly with the highway patrol board.

Upon the filing of the same, if the supervisor, in his opinion, believes that such charges constitute grounds for suspension, demotion, or discharge, he shall order a hearing to be had thereon before the highway patrol board and fix a time for such hearing, otherwise he shall dismiss such charges.

At least ten (10) days before the time appointed for said hearing, written notice specifying the charge or charges filed and stating the name of the person or persons making the charge or charges shall be served on the said employee personally, if his whereabouts is known, in the state of Montana. If at the time, the whereabouts of the said employee is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the said written notice to him at his last known place of residence in Montana.

If the said supervisor orders a hearing he may suspend such employee pending the rendition of the decision made in such case.

The highway patrol board shall be the authority to hear such charge or charges and render a decision and appropriate order.

The highway patrol board shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

The employees accused shall be entitled to be confronted with the witnesses against him and have an opportunity to cross examine the same and to introduce at such hearing testimony in his own behalf, and shall be entitled to be represented by counsel at such hearing. The highway patrol board shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the supervisor and with the employee accused also.

If, after such hearing, the highway patrol board finds that any such charge or charges made against the employee is true, it may punish the offending party by reprimand, suspension without pay, demotion, or dismissal.

Any employee who is so suspended, demoted or dismissed may have a right of appeal to the district court of Lewis and Clark county, within ten (10) days after such decision or determination of the highway patrol board, and said court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court. If such decision or determination of the highway patrol board shall be finally reversed or modified by said court, the said employee shall be reinstated in his position and the highway patrol board shall compensate the said employee so suspended out of the highway patrol revolving fund any salary or wages withheld from him

pending the determination of the charge or charges or as may be directed by the court.

If, after a patrol board hearing, the employee is found not guilty of the charge or charges filed against him, he shall be immediately reinstated in his position and shall be reimbursed for such salary or wages withheld from him during the period of determination of the decision upon such charges.

The highway patrol board shall have the authority to order the supervisor to file charges with the board if the supervisor in his judgment does not believe the charge or charges warrant a hearing. [L. '37, Ch. 182, § 3. Approved March 18, 1937. In effect May 17, 1937.

1741.6. Equipment for patrolmen—furnished by board—of what to consist. The highway patrol board shall equip patrolmen with either automobiles or motorcycles, and all said equipment shall be fitted with a distinctive siren and a particularly designated light at night. The patrol board shall furnish all permanent patrolmen with one cap, one blouse, and one pair of trousers per man per year or three-fourths of their respective values in cash, with the approval of the assistant supervisor of their respective districts. [L. '37, Ch. 182, § 4, amending R. C. M. 1935, § 1741.6. Approved March 18, 1937. In effect May 17, 1937.

1741.7. Users of highways—acts constituting crimes enumerated. For the purpose of this act, the following acts committed relative to the use of the highways and the operation of motor vehicles in the state of Montana outside of incorporated towns and cities shall constitute a crime punishable by law as hereinafter provided:

(1). Driving a motor vehicle without all proper licenses or permits as now required or hereafter provided.

(2). Passing a motor or other vehicle without giving proper warning.

(3). Passing a motor or other vehicle on blind curves, hills, or any other place where view is obstructed or obscured.

(4). In driving a vehicle, other than automotive, at night without suitable lights or approved reflectors for the protection of oncoming traffic.

(5). Driving a motor or other vehicle while under influence of a drug or intoxicating liquor.

(6). Driving an automotive vehicle in a reckless manner, or in excess of speeds designated by the highway patrol supervisor at dangerous points. Driving an automotive vehicle in a reckless manner is the violation

of two (2) or more of the highway patrol board regulations or of the Montana motor vehicle code or any one or more violations of this act that has caused an accident.

(7). Operating a motor vehicle in an unsafe mechanical condition. This pertains specifically to brakes, light, visibility of glass enclosures and windshields, steering devices and mechanical features enabling the operator to handle his car in a safe manner under all normal conditions.

(8). Driving an automotive vehicle in excess of forty (40) miles per hour on all sharp curves marked with standard highway markers.

(9). Failing to observe "school zone" signs and other signs or signals legally placed along or on the highways.

(10). Towing a trailer which is not equipped with safety chains or hitch approved by the supervisor or an assistant supervisor, tail light or approved reflector, and which is not constructed so as to operate without wobbling.

(11). Propelling a bicycle on the public highway one (1) hour after sundown or one (1) hour before sunup which is not equipped with a white light visible under normal conditions at least two hundred (200) feet to the front and a rear light or reflex mirror exhibiting a red light to the rear.

(12). Operating motor vehicle with headlight globes with greater than thirty-two (32) candle power intensity.

(13). Operating a motor vehicle without windshield wiper or rear-view mirror.

(14). Permitting "wrecker cars" or other towing agencies' equipment to block the highways without first placing proper signs or flares at night and red flags during the day a sufficient distance, depending upon conditions, front and rear to protect oncoming traffic.

(15). Allowing parked, disabled, or stalled truck or trailer on the highway without having flares or lanterns during the nighttime, and red flags in the daytime, placed at a sufficient distance, depending on conditions, front and rear, to allow oncoming traffic an opportunity to stop; and not removing such truck or trailer from the highway as quickly as possible.

(16). Vehicles entering the main highways from a side road or drive must completely stop before entering said highway and right of way must be given to a vehicle traveling on the main highways.

(17). Stopping or parking on the main traveled portion of the highways.

(18). Walking on other than the left hand side of the road.

(19). Failing to drive to the right of the center line at all times except when overtaking or passing a motor or other vehicle. Passing is only allowed where the driver overtaking another vehicle can see sufficient clear road to pass and return to his side of the road before endangering an approaching vehicle coming in the opposite direction.

(20). Failing to observe the word, signal, or whistle of a highway patrolman. Patrolmen shall have the authority to stop, examine, and test any vehicle that he sees fit.

(21). Operating a motor vehicle with more than three (3) persons in the driver's seat.

(22). Operating a motor vehicle unless such vehicle is equipped with muffler in good working order and in constant operation to prevent excessive and unusual noise, and it shall be unlawful to use muffler "cut-outs". [L. '37, Ch. 182, § 5, amending R. C. M. 1935, § 1741.7. Approved March 18, 1937. In effect May 17, 1937.

1939. Section 1741.7, though a later enactment than section 1746.1, did not repeal the latter. *State v. Schnell*, Mont., 88 P. (2d) 19, holding these sections must be read together.

1939. The rule that when the facts, acts, and circumstances of the commission of a crime are set forth in the complaint or indictment with sufficient certainty to constitute an offense, it is not a fatal defect that the complaint gives the offense an erroneous name, applied to a complaint charging a misdemeanor in driving a motor vehicle while under the influence of intoxicating liquor, under section 1746.1, while the offense was named as the one characterized under section 1741.7, since the name of the offense may be disregarded as surplusage. *State v. Schnell*, Mont., 88 P. (2d) 19.

1741.8. Penalties — warning cards — fines — imprisonment — reckless driving — driving while intoxicated — prohibition of driving — appeal — bail forfeiture — costs — civil actions. That section 1741.8 of the revised codes of Montana of 1935, be, and the same is hereby amended to read as follows:

1741.8. The violation of any of the provisions of the above mentioned sections, or other provisions of the state motor vehicle laws, other than driving in a reckless manner or while intoxicated, shall be punishable as follows:

For the first offense the offender, in the discretion of the patrolmen, may be issued a "warning" card or be punished, on conviction, by a fine of not less than two dollars (\$2.00) or more than five dollars (\$5.00).

For the second offense of the above mentioned provisions, the penalty shall not be less than five dollars (\$5.00) or more than ten dollars (\$10.00).

For the third or subsequent offenses, the penalty shall be not less than twenty-five

dollars (\$25.00) or more than one hundred dollars (\$100.00).

On failure of payment of fines, the offender, in cases of misdemeanor, shall be imprisoned in the county jail in the county in which the offense has been committed, and said imprisonment shall be computed upon the basis of a two dollar (\$2.00) fine for each day's incarceration.

For the offense of driving in a reckless manner, the fine for the first offense shall not be less than ten dollars (\$10.00) or more than three hundred dollars (\$300.00) and/or imprisonment in the county jail for a term of not less than five (5) days or more than thirty (30) days.

For the second offense, the fine shall be not less than three hundred dollars (\$300.00) or more than five hundred dollars (\$500.00) and/or imprisonment in the county jail for a term of not less than thirty (30) days or more than six (6) months.

For the third offense, the fine shall not be less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1000.00) and/or imprisonment in the state prison for a term of not less than six (6) months or more than three (3) years.

For the offense of driving while intoxicated, the penalty for the first offense shall be a fine of not less than twenty-five dollars (\$25.00) or more than three hundred dollars (\$300.00) and/or imprisonment in the county jail for a term of not less than ten (10) days or more than six (6) months.

For the second offense, the fine shall not be less than three hundred dollars (\$300.00) or more than one thousand dollars (\$1000.00) and/or imprisonment in the state prison for a term of not less than six (6) months or more than three (3) years.

For the third offense, the fine shall be not less than one thousand dollars (\$1000.00) or more than five thousand dollars (\$5000.00) and/or imprisonment in the state prison for a term of not less than three (3) years or more than ten (10) years.

In addition to the above mentioned penalties, upon conviction of a motor vehicle driver of any of the above mentioned offenses, it shall be at the discretion of the highway patrol board, justice of the peace or district court judge to order the offender to refrain from operating a motor vehicle for a stated period of time. The penalty upon conviction for driving a motor vehicle after such restraining order has been issued shall be from twenty-five dollars (\$25.00) to one hundred dollars (\$100.00) and/or imprisonment of ten (10) to sixty (60) days in jail.

In the event of such order to refrain from driving, an appeal may be had to any court of competent jurisdiction for a review of the order. For the purpose of determining second or subsequent offense under the highway patrol law, the forfeiture of bail is equivalent to conviction.

Upon conviction, the court costs, or any part thereof, may also be assessed against the defendant in the discretion of the court.

It is not the intent of this act to in any manner provide immunity from civil prosecution or action for damages. [L. '37, Ch. 182, § 6. Approved March 18, 1937. In effect May 17, 1937.

1741.9. When arrest by patrolmen allowed—forbidden to act in labor disputes or congregate to preserve peace in one county—empowered to stop vehicles transporting livestock and livestock products. In addition to the above mentioned duties the highway patrol supervisor and all patrolmen are authorized under this act to make arrests for the following offenses committed; if committed in the presence of said supervisor or any of said patrolmen, or if committed in a rural district, upon the request of a peace officer, or if committed in a city or town of less than twenty-five hundred (2500) inhabitants, upon the request of any peace officer, or the mayor, or an alderman of said city or town:

The crimes of murder, assault with a deadly weapon, arson, burglary, larceny, kidnapping, illegal transportation of narcotics or violation of the Dyer act regarding the transportation of stolen automobiles, and shall be deemed police officers in making arrest in all offenses occurring on the highways of the state; provided that such highway patrolmen shall have no authority and are expressly forbidden to make arrests in labor disputes or in preventing violence in connection with strikes, and shall not be permitted to perform any duties whatsoever in connection with labor disputes, strikes, or boycotts, and shall not be permitted to congregate or act as a unit in one county to suppress riots or preserve the peace.

The patrolmen are also hereby empowered to stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products; and whenever the patrolmen have good reason to believe that such livestock or livestock products have been stolen, they are empowered to take possession of the same until such livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts, as to the actual

ownership can be ascertained. [L. '39, Ch. 211, § 1, amending R. C. M. 1935, § 1741.9, as amended by L. '37, Ch. 62, § 1, and L. '37, Ch. 182, § 7. Approved and in effect March 17, 1939.

Section 2 repeals conflicting laws.

Note. As this section was amended twice at the same session of the legislature, and no reference was made from the one to the other, they are both printed.

1741.10. Patrolman's duty on making arrest—justice of peace's fees. Patrolmen, upon making an arrest, shall either deliver the offender to the nearest justice of the peace during office hours, or to the county jail, or in lieu thereof, deliver to the offender a form of summons describing the nature of the offense with instruction thereon for the offender to report to the nearest justice of the peace, or in lieu of reporting to the nearest justice of the peace, the patrolman has the right to set and accept a deposit for appearance justifiable for the offense charged.

For the purpose of this act only, the fees of justice of the peace in all offenses in which the fine is five dollars (\$5.00) or less, shall be one dollar (\$1.00), but if the fine is in excess of five dollars (\$5.00), the justice of the peace shall be permitted the fee now prescribed by law; provided that no additional fees shall be paid justices of the peace where salaries are fixed by law. [L. '37, Ch. 182, § 8, amending R. C. M. 1935, § 1741.10. Approved March 18, 1937. In effect May 17, 1937.

1741.11. Driver's license required—time to procure—fee—driving by person under 15—permission. Within sixty (60) days from and after the passage and the approval of this act, every owner and driver of a motor vehicle, including motorcycles, shall procure a driver's license from the county treasurer of the county in which applicant resides. The fee, beginning January 1, 1938, for a driver's license for a taxi driver, truck driver, or any driver of a motor vehicle shall be seventy-five cents (75c), purchased annually on or before January first, and said license shall expire on December thirty-first of the same year.

It shall be unlawful and is hereby prohibited for any person under the age of fifteen (15) to purchase a driver's license or drive a motor vehicle in the state of Montana without first securing permission from the highway patrol supervisor or assistant supervisors. [L. '37, Ch. 182, § 9. Approved March 18, 1937. In effect May 17, 1937.

1741.11-1. Definitions. For the purposes of this act the use of the words Montana highway patrol board, highway patrol board, patrol

board, or board, refers to, means, and is the Montana highway commission. [L. '37, Ch. 182, § 11. Approved March 18, 1937. In effect May 17, 1937.

Section 10 repeals conflicting laws.

CHAPTER 151

SPEED AND TRAFFIC REGULATIONS

Section

- 1742.1. Motor vehicles—speed regulations—reasonableness and prudence.
- 1742.2. Same—same—trucks.
- 1742.3. Same—same—speed limit zones—establishment—power of supervisor of highway patrol—violation.
- 1742.4. Same—same—same—classification of zones—maximum speeds.
- 1742.5. Same—same—nighttime driving—exceeding 55 miles per hour—prima facie evidence of recklessness.
- 1742.6. Same—same—violations of act—penalties.
- 1742.7. Same—same—absence of zones—speed applicable—excess—presumptions.
- 1744.1. Repealed.
- 1751.2. Size of vehicles and loads—width—height—length.
- 1751.3. Subsections repealed.
- 1751.4. Weight of vehicles and loads—gross weights—load per inch of tire width.
- 1751.5. Officers may weigh vehicles and require removal of excessive loads.
- 1751.6. Permits for excess size and weight—public liability insurance required—duration of permit.
- 1751.7. When state or local road authorities may restrict right to use of highways.
- 1751.9. Violations of act—misdemeanors—penalties.
- 1754.6. Repeals.

1742. Speed regulations.

1936. ✓ There is no specific legal limit or restriction placed on the rate of speed at which a car shall travel on the highways of this state. *Cowden v. Crippen*, 101 Mont. 187, 53 P. (2d) 98, holding speed not excessive under circumstances.

1936. ✓ Evidence held to show that the driver of an automobile could have seen a road grader with which he collided in ample time to have avoided the collision if he had been keeping a proper lookout ahead as required by law. *Boepple v. Mohalt*, 101 Mont. 482, 54 P. (2d) 879.

1936. ✓ In determining whether host-driver was guilty of gross negligence the pertinent question is whether the speed was so excessive as to affect defendant's control of the car under the conditions which actually existed at the particular time and place, or as they reasonably appeared to him. *Cowden v. Crippen*, 101 Mont. 187, 53 P. (2d) 98.

1742.1. Motor vehicles—speed regulations—reasonableness and prudence. No person shall drive a motor vehicle on a public highway of this state at a speed greater than is reasonable and prudent under conditions then existing. [L. '39, Ch. 198, § 1. Approved March 17, 1939.

1742.2. Same—same—trucks. Maximum speed limits for trucks of more than two (2) ton capacity shall be forty-five (45) miles per hour. [L. '39, Ch. 198, § 2. Approved March 17, 1939.

1742.3. Same—same—speed limit zones—establishment—power of supervisor of highway patrol—violation. The supervisor of the highway patrol is authorized and empowered to determine and establish on any public highway of the state of Montana, or any portion thereof, limited speed zones, which speed limits shall constitute the maximum speed at which any person may drive or operate any vehicle upon such zoned highway, or portion thereof so zoned, and on which the maximum speed permissible in said zone has been conspicuously posted. Any speed in excess of the maximum speed posted shall be prima facie evidence that the speed is not reasonable or prudent and that it is reckless driving by the driver of the vehicle. [L. '39, Ch. 198, § 3. Approved March 17, 1939.

1742.4. Same—same—same—classification of zones—maximum speeds. Such zones are limited and classified as follows:

A. Zone 1. The maximum permissible speed shall not exceed twenty (20) miles per hour.

B. Zone 2. The maximum permissible speed shall not exceed thirty (30) miles per hour.

C. Zone 3. The maximum permissible speed shall not exceed forty-five (45) miles per hour.

D. Zone 4. The maximum permissible speed shall not exceed that permitted in the three preceding zones, and shall be a reasonable rate of speed; provided that during the hours when lights on vehicles are required, the maximum rate of speed shall be fifty-five (55) miles per hour. [L. '39, Ch. 198, § 4. Approved March 17, 1939.

1742.5. Same—same—nighttime driving—exceeding 55 miles per hour—prima facie evidence of recklessness. Regardless of any of the other provisions of this act, it shall be prima facie evidence of reckless driving for any person to operate any vehicle anywhere in Montana during the nighttime at a speed in excess of fifty-five (55) miles per hour. [L. '39, Ch. 198, § 5. Approved March 17, 1939.

1742.6. Same—same—violations of act—penalties. Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not less than ten (10) days nor more than ninety (90) days, or by a fine of not more than one hundred dollars (\$100.00), and on

a second or subsequent conviction may, in the discretion of the court, be punished by imprisonment for not less than thirty (30) days nor more than ninety (90) days, or by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00). [L. '39, Ch. 198, § 6. Approved March 17, 1939.

1742.7. Same — same — absence of zones — speed applicable — excess — presumptions.

Where no special hazard exists on any section of highway outside of a municipality, which section is not zoned and posted as hereinbefore provided, the speed limits specified in zone 4 shall apply and any speed in excess of such limits shall be prima facie evidence that such speed is unreasonable and imprudent, and of reckless driving by the driver of the vehicle. [L. '39, Ch. 198, § 7. Approved March 17, 1939.

Section 8 repeals conflicting laws.

1744.1 Repealed. [L. '39, Ch. 210, § 20. Approved March 17, 1939. See § 1754.6.

1743. Traffic regulations.

1936. ✓ Evidence held to show that the driver of an automobile could have seen a road grader with which he collided in ample time to have avoided the collision if he had been keeping a proper lookout ahead as required by law. *Boepple v. Mohalt*, 101 Mont. 482, 54 P. (2d) 879.

1936. ✓ Motorist, while proceeding in a lawful manner on the proper side of the highway, has a right to assume that any one attempting to pass around him will proceed in a lawful manner and on his own side of the road, as required by statute. *Cowden v. Crippen*, 101 Mont. 187, 53 P. (2d) 98.

1936. ✕ Motorist has no duty to slow down when he becomes aware that another motorist desires to pass him from the rear. *Cowden v. Crippen*, 101 Mont. 187, 53 P. (2d) 98.

Subdivision 1.

1939. ✓ Plaintiff while crossing an intersection to board a street car, was struck by an automobile travelling 18 to 20 miles per hour. It was for the jury to say whether or not a reasonably prudent person would have travelled at that speed under all the circumstances. *Hill v. Haller*, Mont., 90 P. (2d) 977.

1746.1. Driving on public highway while intoxicated prohibited.

1939. ✓ In a prosecution for driving motor vehicle while under the influence of intoxicating liquor, evidence that an accident occurred while the defendant was so driving was admissible. *State v. Schnell*, Mont., 88 P. (2d) 19.

1939. ✓ Evidence held sufficient to sustain conviction of driving motor vehicle while under the influence of intoxicating liquor. *State v. Schnell*, Mont., 88 P. (2d) 19.

1939. ✓ In a prosecution for driving motor vehicle while under the influence of intoxicating liquor, opinions of witnesses who observed defendant held admissible. *State v. Schnell*, Mont., 88 P. (2d) 19.

1939. ✓ In a prosecution for driving a motor vehicle "while under the influence of intoxicating liquor," an instruction including the words "or while intoxicated" held erroneous but not reversible error. *State v. Schnell*, Mont., 88 P. (2d) 19.

1939. ✓ Section 1741.7, though a later enactment than section 1746.1, did not repeal the latter. *State v. Schnell*, Mont., 88 P. (2d) 19, holding these sections must be read together.

1939. ✓ The rule that when the facts, acts, and circumstances of the commission of a crime are set forth in the complaint or indictment with sufficient certainty to constitute an offense, it is not a fatal defect that the complaint gives the offense an erroneous name, applied to a complaint charging a misdemeanor in driving a motor vehicle while under the influence of intoxicating liquor, under section 1746.1, while the offense was named as the one characterized under section 1741.7, since the name of the offense may be disregarded as surplusage. *State v. Schnell*, Mont., 88 P. (2d) 19.

1939. ✓ In a prosecution for driving a motor vehicle while under the influence of intoxicating liquor, evidence that the defendant was intoxicated held admissible. *State v. Schnell*, Mont., 88 P. (2d) 19.

1748. Liability of owner for negligence of driver.

1938. A water commissioner appointed by the district court first acquiring jurisdiction to adjudicate water rights in a watershed extending into several counties is empowered to assess costs and expenses against land benefitted in another county, which constitutes a lien thereon. *State ex rel. Swanson v. District Court*, 107 Mont. 203, 82 P. (2d) 779.

1748.1. Owner or operator of vehicle released from responsibility for injuries of guest, when.

1938. Plaintiff, two companions and the defendant took a trip in defendant's car to California by way of Montana. Each of the party contributed a definite amount for the expense of the operation of the car. While in Montana defendant ran off the road and injured plaintiff. Under the Montana guest law it was held that a person may not be a guest and still not be a passenger for hire and thus entitled to recover from the defendant upon the showing of lack of due care on the part of the defendant. *Smith v. Clute*, 277 N. Y. 407, 14 N. E. (2d) 455.

1937. ✓ In action against the driver of an automobile the complaint held to sufficiently allege defendant's gross negligence, as amended to conform to proof. *Baatz v. Noble*, 105 Mont. 59, 69 P. (2d) 579.

1937. ✓ Where partner allowed an employee of the partnership to drive the partner's personal automobile on return trip after getting some property leased by the partnership, and the employee drove the machine into a tree, killing two guests invited by the partner, the partnership was liable for the gross negligence of the driver, although the evidence of the negligence was almost entirely circumstantial. *Doheny v. Coverdale*, 104 Mont. 534, 68 P. (2d) 142.

1937. ✓ In action by guest against driver of automobile, an instruction permitting jury to consider driver's failure to heed warning signs on approaching dangerous places in the road held not erroneous. *Baatz v. Noble*, 105 Mont. 59, 69 P. (2d) 579.

1937. ✓ In order to sustain a verdict for a guest for injuries under this section the record on appeal from orders denying motions for nonsuit and for directed verdict, must contain some substantial evidence tend-

ing to prove that the plaintiff's injuries were caused directly and proximately by the gross negligence and reckless operation of an automobile by the defendant. *Baatz v. Noble*, 105 Mont. 59, 69 P. (2d) 579.

1937. ✓ "Gross negligence" under this statute does not mean willful and wanton misconduct, nor are degrees of negligence excluded. *Baatz v. Noble*, 105 Mont. 59, 69 P. (2d) 579.

1937. ✓ Evidence held to take an action to the jury on the question of driver's gross negligence. *Baatz v. Noble*, 105 Mont. 59, 69 P. (2d) 579.

1936. ✓ In determining whether host-driver was guilty of gross negligence the pertinent question is whether the speed was so excessive as to affect defendant's control of the car under the conditions which actually existed at the particular time and place, or as they reasonably appeared to him. *Cowden v. Crippen*, 101 Mont. 187, 53 P. (2d) 98.

1936. ✓ To warrant recovery against host for death of guest riding in automobile, the plaintiff must prove that death was caused directly and proximately by host's grossly negligent and reckless operation of his car either standing alone or in concurrence with wrongful acts on the part of other motorist in collision. *Cowden v. Crippen*, 101 Mont. 187, 53 P. (2d) 98.

1936. ✓ Evidence held not to show that the host-driver of an automobile failed to keep a proper lookout. *Cowden v. Crippen*, 101 Mont. 187, 53 P. (2d) 98.

1748.2. Assumption of risk by guest in motor vehicle, when.

1938. ✓ Plaintiff, two companions and the defendant took a trip in defendant's car to California by way of Montana. Each of the party contributed a definite amount for the expense of the operation of the car. While in Montana defendant ran off the road and injured plaintiff. Under the Montana guest law it was held that a person may not be a guest and still not be a passenger for hire and thus entitled to recover from the defendant upon the showing of lack of due care on the part of the defendant. *Smith v. Clute*, 277 N. Y. 407, 14 N. E. (2d) 455.

1748.3. Imputation of ordinary negligence to guests.

1938. ✓ Plaintiff, two companions and the defendant took a trip in defendant's car to California by way of Montana. Each of the party contributed a definite amount for the expense of the operation of the car. While in Montana defendant ran off the road and injured plaintiff. Under the Montana guest law it was held that a person may not be a guest and still not be a passenger for hire and thus entitled to recover from the defendant upon the showing of lack of due care on the part of the defendant. *Smith v. Clute*, 277 N. Y. 407, 14 N. E. (2d) 455.

1748.4. Act not applicable to common carriers or demonstrators.

1938. ✓ Plaintiff, two companions and the defendant took a trip in defendant's car to California by way of Montana. Each of the party contributed a definite amount for the expense of the operation of the car. While in Montana defendant ran off the road and injured plaintiff. Under the Montana guest law it was held that a person may not be a guest and still not be a passenger for hire and thus entitled to recover from the defendant upon the showing of lack of due care on the part of the defendant. *Smith v. Clute*, 277 N. Y. 407, 14 N. E. (2d) 455.

1749. Moving heavy machinery or loads.

1938. ✓ A water commissioner appointed by the district court first acquiring jurisdiction to adjudicate water rights in a watershed extending into several counties is empowered to assess costs and expenses against land benefitted in another county, which constitutes a lien thereon. *State ex rel. Swanson v. District Court*, 107 Mont. 203, 82 P. (2d) 779.

1751.2. Size of vehicles and loads — width — height — length. (a) Width. No vehicle shall exceed a total outside width, including any load thereon, of eight (8) feet, except certain vehicles now in operation which, by reason of the substitution of pneumatic tires for other types of tires, exceed the above limit; provided, further in no case shall such width exceed one hundred two (102) inches and that after January 1, 1945, no equipment exceeding eight (8) feet in width, shall be operated; and further excepting implements of husbandry temporarily propelled or moved upon the public highway, and road machinery engaged in the construction and maintenance of highways.

(b) Height. No vehicle, unladen or with load, shall exceed a height of thirteen (13) feet six (6) inches, except that the public body having jurisdiction may at its discretion reduce this height consistent with conditions of individual sections of highway.

(c) Length. No vehicle shall exceed a length of thirty-five (35) feet extreme over all dimension, inclusive of front and rear bumpers. Further, combinations of vehicles shall consist of not more than two units, and, when so combined, shall not exceed a total length of sixty (60) feet except that the public body having jurisdiction may, at its discretion, reduce this length consistent with the conditions of individual highways. For occasional movements of materials or objects of dimensions which exceed the limits herein provided, a special permit shall be required. [L. '39, Ch. 184, § 1, amending R. C. M. 1935, § 1751.2. Approved and in effect March 17, 1939.]

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

1751.3. Subsections repealed. That subparagraph "a" and "c" of section 1751.3, revised codes of Montana, 1935, be, and the same are hereby repealed. [L. '39, Ch. 184, § 2, amending R. C. M. 1935, § 1751.3. Approved and in effect March 17, 1939.]

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

1751.4. Weight of vehicles and loads — gross weights — load per inch of tire width. (A) No wheel equipped with pneumatic tires shall carry a load in excess of nine thousand (9,000) pounds, nor shall the total load car-

ried by any axle having wheels equipped with pneumatic tires exceed eighteen thousand (18,000) pounds.

(B) No wheel equipped with solid rubber, or cushion tires shall carry a load in excess of eight thousand (8,000) pounds, nor shall the total load carried by an axle having wheels equipped with such tires exceed sixteen thousand (16,000) pounds.

(C) An axle load shall be defined as the total load on all wheels whose centers may be included between two parallel transverse planes forty (40) inches apart.

(D) The wheels of all vehicles, including trailers, except those operated at a speed of ten (10) miles per hour, or less, shall be equipped with pneumatic tires.

(E) Gross weights.

(a) Subject to the limitation imposed by the statutory axle loads, no vehicle or combination of vehicles shall be operated whose gross weight, with load, exceeds that given by the formula:

$W=700 (L \text{ plus } 40)$ where

W =total gross weight, with load, in pounds

L =the distance between the first and last axle of a vehicle or combination of vehicles in feet.

(b) The total gross weight, with load, on any group of axles of a vehicle or combination of vehicles where the distance between the first and last axles of the group is twenty (20) feet or less, shall not exceed that given by the formula:

$W=650 (L \text{ plus } 40)$ where

W =total gross weight, with load, in pounds on the group of axles under consideration

L =the distance between the first and last axles of the group under consideration.

(F) Load per inch of tire width.

(a) No wheel equipped with pneumatic, solid rubber, or cushion tires shall carry a load in excess of six hundred (600) pounds for each inch of tire width.

(b) The width of pneumatic tires shall be taken as the manufacturer's rating. The width of solid rubber and cushion tires shall be measured at the flange of the rim. [L. '39, Ch. 184, § 3, amending R. C. M. 1935, § 1751.4. Approved and in effect March 17, 1939.]

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

1751.5. Officers may weigh vehicles and require removal of excessive loads. Any peace officer, officer of the Montana highway patrol, or employees of the maintenance department of the Montana highway commission having reason to believe that the weight of a vehicle

and load is unlawful are authorized and empowered to weigh the same, either by means of portable or stationary scales, and may require that such vehicle be driven to the nearest scales in the event such scales are within two (2) miles. The peace officer, officer of the Montana highway patrol, employees of the maintenance department of the Montana highway commission may then require the driver to unload immediately such portion of the load as may be necessary to decrease the weight of such vehicle to conform to the maximum allowable weights specified in this act. [L. '39, Ch. 184, § 4, amending R. C. M. 1935, § 1751.5. Approved and in effect March 17, 1939.]

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

1751.6. Permits for excess size and weight — public liability insurance required — duration of permit. The state highway commission, and local authorities in their respective jurisdiction, may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing, authorizing the applicant to operate or move a vehicle of a size or weight exceeding the maximum specified in this act upon any highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible; provided, however, that no permits are to be issued for the moving of loads for any considerable distances over such highways when the loads in question are of such excess width that all traffic lanes upon the highway concerned would be blocked to the serious inconvenience of normal traffic; and further provided that no permits are to be granted for the moving of loads of such excess width that a hazard to traffic would be involved for any considerable distances over the highways concerned except to those applicants who carry public liability and property damage insurance for the protection of the traveling public as a whole. No permit shall be issued for a period of more than nine (9) months and every such permit shall designate the routes to be traversed and may contain any other restrictions or conditions deemed necessary by the body granting such permit, and may be cancelled at any time by such body for cause. Every such permit or a true copy thereof shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer, officer of the Montana highway patrol, or employee of the maintenance department of the Montana highway commission and it shall be a misdemeanor for any person, firm or corporation to violate any of the terms or conditions of such permit.

[L. '39, Ch. 184, § 5, amending R. C. M. 1935, § 1751.6. Approved and in effect March 17, 1939.

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

1751.7. When state or local road authorities may restrict right to use of highways. State or local road authorities may by ordinance or resolution prohibit the operation of vehicles upon any public highway under their respective jurisdictions or impose restrictions as to the weight of vehicle when operated upon any public highway under the jurisdiction of and for the maintenance of which such authorities are responsible, whenever any said highway by reason of deterioration, rain, snow or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles thereon are prohibited or the permissible weights thereof reduced. Such authorities enacting any such ordinance or resolution shall erect or cause to be erected signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective until or unless such signs are erected. Such authorities may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles, or impose limitations as to the weight thereof on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways. [L. '39, Ch. 184, § 6, amending R. C. M. 1935, § 1751.7. Approved and in effect March 17, 1939.

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

1751.9. Violations of act — misdemeanors — penalties. (a) It shall be unlawful and constitute a misdemeanor for any person, firm or corporation to violate any of the provisions of this act unless such violation is by this act or other law of this state declared to be a felony.

(b) Any person, firm or corporation first convicted of a misdemeanor for a violation of any of the provisions of this act for which another penalty is not provided shall for a conviction thereof be punished by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00), or by imprisonment in the county or municipal jail for not less than five (5) days nor more than twenty-five (25) days; for a second such conviction within one (1) year thereafter such person, firm or corporation shall be punished by a fine of not less than fifty dollars (\$50.00), nor more than two hundred dollars (\$200.00) or by imprisonment in the county or municipal jail for not less

than twenty-five (25) days nor more than one hundred (100) days, or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction such person, firm or corporation shall be punished by a fine of not less than two hundred dollars (\$200.00), nor more than five hundred dollars (\$500.00), or by imprisonment in the county or municipal jail for not less than one hundred (100) days nor more than six (6) months, or by both such fine and imprisonment. [L. '39, Ch. 184, § 7, amending R. C. M. 1935, § 1751.9. Approved and in effect March 17, 1939.

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

1753. Accessories required upon motor vehicles.

1935. ✓ A violation of this section in regard to lights constitutes negligence. *Ashley v. Safeway Stores, Inc.*, 100 Mont. 312, 47 P. (2d) 53.

1935. ✓ Whether the negligence of a truck driver in leaving a truck standing in the highway without lights on a dark night was the proximate cause of motorist colliding therewith from the rear held, under the evidence, for the jury, and evidence was sufficient to show truck driver's negligence. *Ashley v. Safeway Stores, Inc.*, 100 Mont. 312, 47 P. (2d) 53.

1935. ✓ While automobile driver was not entitled to assume that the highway would be at all times unobstructed in the line of his travel he was entitled to assume that a truck standing upon the highway at night would display lights both upon the front and rear thereof. *Ashley v. Safeway Stores, Inc.*, 100 Mont. 312, 47 P. (2d) 53.

1935. ✓ Truck driver's negligence in leaving truck standing in the highway without lights on a dark night held to continue as long as the truck stood there, under same conditions. *Ashley v. Safeway Stores, Inc.*, 100 Mont. 312, 47 P. (2d) 53.

1754.6. Repeals. Sections 1744.1 and 1754.6 of the revised codes of Montana, 1935, be, and the same are hereby repealed. [L. '39, Ch. 210, § 20. Approved March 17, 1939.

Section 21 repeals conflicting laws.

CHAPTER 151A

RECKLESS OPERATION OF MOTOR VEHICLES — FINANCIAL RESPONSIBILITY — PENALTIES

Section

1754.11. Act supplementary to motor vehicle law.

1754.12. Offenses—suspension of license—renewal—requirements—application—duty of court clerk—court record as evidence—non-residents—chauffeur—vehicle registration in name of convicted person—owner's financial responsibility—proof.

Section

- 1754.13. Judgment — failure to satisfy — license suspension—renewal—court clerk's duty —subsequent judgment—partial payment of judgments—installments—license restoration—non-residents.
- 1754.14. Financial responsibility — insurance — certificate — requirements — non-residents —power of attorney to registrar to accept service of process—policy conforming to state law—final judgment—agreement to accept—reciprocity of laws —termination of policy liability—notice —surety bond—deposit of money or collateral—additional evidence of financial responsibility.
- 1754.15. Bond or money to satisfy judgment—attachment—action on bond—foreclosure of lien.
- 1754.16. Operating records of drivers—abstracts—registrar to furnish insurance carrier—fee.
- 1754.17. Vehicle operator's financial ability—information—registrar's duty to furnish.
- 1754.18. Suspended license—operator to return — failure—penalty—duty of police.
- 1754.19. Bond, policy, or deposit—return to operator —procedure—substitutions.
- 1754.20. Suspended certificate of registration — transfer.
- 1754.21. Liability insurance—application of act.
- 1754.22. Violations—penalties.
- 1754.23. Motor vehicle liability policy—definition—requisites — separate policies — claims — cancellation of policy—reimbursement of insurance carrier — binder — delivery — endorsement.
- 1754.24. Definitions.
- 1754.25. Rules and regulations—registrar to make.
- 1754.26. Act cumulative.

1754.11. Act supplementary to motor vehicle law. This act shall in no respect be considered as a repeal of any of the provisions of the state motor vehicle code or laws, but shall be construed as supplemental thereto. [L. '37, Ch. 129, § 1. Approved March 15, 1937; in effect May 1, 1937.]

1754.12. Offenses — suspension of license — renewal — requirements — application — duty of court clerk — court record as evidence — nonresidents — chauffeur — vehicle registration in name of convicted person — owner's financial responsibility — proof. The motor vehicle operator's and/or chauffeur's license and all of the registration certificates of any person who shall by a final order or judgment have been convicted of or shall have pleaded guilty to or shall have forfeited any bond or collateral deposited to secure the appearance for trial of the defendant (where such forfeiture shall not have been vacated) for any of the following offenses hereafter committed, to-wit:

Operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs in violation of section 1746.1 of the revised codes of the state of Montana of 1935;

Homicide arising out of the operation of a motor vehicle; reckless driving, resulting in personal injury or damage to property;

An offense in any other state or in any province of the Dominion of Canada which, if committed in this state, would be in violation, as aforesaid, of any of the above specified provisions of law of this state;

shall be suspended forthwith without notice or hearing by the registrar of motor vehicles or other officer in charge of the issuance of motor vehicle operators' and/or chauffeurs' licenses and registration certificates, hereinafter called the registrar, and shall remain so suspended and shall not at any time thereafter be renewed, nor shall any such license be thereafter issued to him or any motor vehicle be thereafter registered in his name until he shall have given proof of his ability to respond in damages for any liability thereafter incurred, resulting from the ownership, maintenance, use or operation thereafter of a motor vehicle for personal injury to or death of any one person in the amount of at least five hundred dollars (\$500.00), and, subject to the aforesaid limit for any one person injured or killed, of at least one thousand dollars (\$1,000.00) for personal injury to or the death of two or more persons in any one accident, and for damage to property in the amount of at least two hundred and fifty dollars (\$250.00) resulting from any one accident. Such proof in said amounts shall be furnished for each motor vehicle registered by such person. If such person shall not be a resident of this state, the privilege of operating any motor vehicle in this state and the privilege of operation within the state of any motor vehicle owned by him shall be withdrawn, and shall remain so withdrawn, and no operator's or chauffeur's license shall be issued to him and no motor vehicle shall be registered in his name until he shall have given proof as aforesaid. It shall be the duty of the clerk of the court, or of the court where it has no clerk, in which any such judgment or order is rendered or other such action taken to forward immediately to the registrar a certified copy or transcript thereof. A certified copy or transcript of the judgment order or record of other action of the court shall be prima facie evidence of the conviction, plea or forfeiture therein stated. In the event that the person so shown to have been convicted, pleaded guilty or forfeited bond or collateral appears to be a nonresident of this state, the registrar shall transmit a copy of such certified copy or transcript, certified to by him, to the officer in charge of the issuance of motor vehicle operators' and/or chauffeurs' licenses and registration certificates of the

state or province of which such person appears to be a resident.

Provided, however, that if it shall be duly established to the satisfaction of the registrar and the registrar shall so find (a) that any person, whether a resident or nonresident of this state, who shall have been convicted, pleaded guilty or forfeited bail or collateral, as aforesaid, was upon the occasion of the offense upon which such conviction, plea or forfeiture was based, a chauffeur or motor vehicle operator, however designated, in the employ of the owner of the motor vehicle involved in such offense or a member of the immediate family or household of the owner of such motor vehicle, and (b) that there was not, at the time of such offense or subsequent thereto, up to the date of such finding, any motor vehicle registered in this state, (or if a nonresident, in the state of his residence) in the name of the person who has so been convicted, pleaded guilty or forfeited bail or collateral, then and in that event, if the person in whose name such motor vehicle is registered shall give proof of ability to respond in damages according to the provisions of this act, which proof the registrar shall accept, such chauffeur or other person, as aforesaid, shall be relieved of the necessity of giving such proof in his own behalf. [L. '37, Ch. 129, § 2. Approved March 15, 1937; in effect May 1, 1937.]

1754.13. Judgment — failure to satisfy — license suspension — renewal — court clerk's duty — subsequent judgment — partial payment of judgments — installments — license restoration — nonresidents. The operator's and/or chauffeur's license and all of the registration certificates of any person, in the event of his failure within thirty (30) days hereafter, to satisfy any judgment which shall have become final, by expiration without appeal of the time within which appeal might have been perfected or by final affirmance on appeal, rendered against him by a court of competent jurisdiction in this state or in any other state or the District of Columbia, or in any district court of the United States, or by a court of competent jurisdiction in any province of the Dominion of Canada, for damages on account of personal injury, including death, or damage to property in excess of one hundred dollars (\$100.00), resulting from the ownership, maintenance, use or operation hereafter of a motor vehicle shall be forthwith suspended by the registrar upon receiving a certified copy or transcript of such final judgment from the court in which the same was rendered showing such judgment or judgments to have been still unsatisfied more than thirty (30) days after the same became final,

as aforesaid, and shall remain so suspended and shall not be renewed, nor shall any license be issued to such person, nor shall any motor vehicle be thereafter registered in his name while any such judgment remains unstayed, unsatisfied and subsisting and until every such judgment is satisfied or discharged except by a discharge in bankruptcy and until the said person gives proof of his ability to respond in damages as required in section 2 of this act [1754.12], for future accidents. It shall be the duty of the clerk of the court, or of the court where it has no clerk, in which any such judgment is rendered, to forward immediately after the expiration of said thirty (30) days, as aforesaid, to the registrar a certified copy of such judgment or a transcript thereof, as aforesaid. In the event the defendant is a non-resident, it shall be the duty of the registrar to transmit to the registrar or commissioner of motor vehicles or officer in charge of the issuance of operators' permits and registration certificates of the state or province of which the defendant is a resident, a certified copy of the said judgment. If after such proof has been given, any other such judgment shall be recovered against such person for an accident occurring before such proof was given but after this act shall take effect, such license or licenses and certificate or certificates shall again be and remain suspended, and no other such license or certificate shall be issued to such person while any such judgment remains unsatisfied and subsisting, as aforesaid,

Provided, however, anything in this act to the contrary notwithstanding, that,

(1) When one hundred dollars (\$100.00) has been credited upon any judgment or judgments rendered in excess of that amount for personal injury to or the death of one person as the result of any one accident; or

(2) When, subject to the limit of five hundred dollars (\$500.00) for any one person so injured or killed, the sum of one thousand dollars (\$1,000.00) has been credited upon any judgment or judgments rendered in excess of that amount for personal injury to or the death of more than one person as the result of any one accident; or

(3) When two hundred and fifty dollars (\$250.00) has been credited upon any judgment or judgments rendered in excess of that amount for damage to property as the result of any one accident, resulting from the ownership, maintenance, use or operation of a motor vehicle, then and in such event, such payment or payments shall be deemed a satisfaction of such judgment or judgments for the purposes of this section only.

And provided further, that a judgment debtor to whom this section applies may, for the sole purpose of giving authority to the registrar to authorize the judgment debtor to operate a motor vehicle thereafter, on due notice to the judgment creditor, apply to the court in which the trial judgment was obtained for the privilege of paying such judgment in installments, and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order, fixing the amounts and times of payment of the installments. While the judgment debtor is not in default in payment of such installments, the registrar, upon his giving proof of ability to respond in damages for future accidents, as hereinbefore provided, may, in his discretion, restore or refrain from suspending his license and/or registration certificate or certificates; but such license and/or certificate or certificates shall be suspended as hereinbefore provided if and when the registrar is satisfied that the judgment debtor has failed to comply with the terms of the court order.

If any such motor vehicle owner or operator shall not be a resident of this state, the privilege of operating any motor vehicle in this state and the privilege of operation within the state of any motor vehicle owned by him shall be withdrawn while any final judgment against him as aforesaid, shall be unstayed, unsatisfied and subsisting for more than thirty (30) days, as aforesaid, and shall not be renewed, nor shall any operator's or chauffeur's license be issued to him or any motor vehicle registered in his name until every such judgment shall be stayed, satisfied or discharged as herein provided, and until such person shall have given proof of his ability to respond in damages for future accidents, as required in section 2 [1754.12] of this act. [L. '37, Ch. 129, § 3. Approved March 15, 1937; in effect May 1, 1937.]

1754.14. Financial responsibility — insurance — certificate — requirements — non-residents — power of attorney to registrar to accept service of process — policy conforming to state law — final judgment — agreement to accept — reciprocity of laws — termination of policy liability — notice — surety bond — deposit of money or collateral — additional evidence of financial responsibility. Proof of ability to respond in damages, when required by this act, may be evidenced by the written certificate or certificates of any insurance carrier duly authorized to do business within the state, that it has issued to or for the benefit of the person named therein a motor vehicle liability policy or policies in the form hereinafter prescribed,

which, at the date of the certificate or certificates, is or are in full force and effect, and designating therein by explicit description or by other adequate reference, all motor vehicles to which the policy or policies apply. The registrar shall not accept any certificate or certificates unless the same shall cover all motor vehicles then registered in this state in the name of the person furnishing such proof. Additional certificates, as aforesaid, shall be required as a condition precedent to the registration of any additional motor vehicle or motor vehicles in the name of such person required to furnish proof as aforesaid. Said certificate or certificates shall certify that the motor vehicle liability policies therein cited shall not be canceled or expire except as hereinafter provided. If such person be a nonresident, a certificate, as aforesaid, of an insurance carrier authorized to transact business in the state or province in which the motor vehicle or motor vehicles described in such certificate is registered, or if none be described, then in the state or province in which the insured resides, shall be accepted if such carrier shall (a) execute a power of attorney authorizing the registrar to accept service of notice or process in any action arising out of a motor vehicle accident in this state, and (b) its governing executive authority shall duly adopt a resolution providing that its policies shall be deemed to be varied to comply with the law of this state relating to the terms of motor vehicle liability policies issued therein, and (c) agree to accept as final and binding any final judgment duly rendered in any action arising out of a motor vehicle accident in any court of competent jurisdiction in this state; provided, however, that the provisions of this section shall be operative as to such insurance carriers (organized and existing under the laws of such state or province and not licensed to transact business in this state) only to the extent and under the same terms and conditions that under the laws of such state or province where such motor vehicle is registered or in which the insured resides, like recognition, if a law of like effect is in force and effect, is granted to certificates of insurance carriers organized and existing under and by virtue of the laws of this state. If, under the laws of such state or province, in which a law of like effect is in force and effect, certificates of insurance carriers organized and existing under or by virtue of the laws of this state are not accepted, the certificates of insurance carriers of such state or province shall not be accepted under the provisions of this act.

The registrar shall be notified by the insurance carrier of the cancellation or expiration of any motor vehicle liability policy certified

under the provisions of the act at least ten (10) days before the effective date of such cancellation or expiration and until such notice is duly given, such policy shall continue in full force and effect.

Such proof may be the bond of a surety company, duly authorized to transact business within the state, or a bond, with at least two (2) individual sureties, each owning real estate within this state, which real estate shall be scheduled in the bond approved by a judge of a court of record which said bond shall be conditioned for the payment of the amounts specified in section 2 of this act [1754.12]; and such bond shall be filed with the registrar and shall not be cancellable except after ten (10) days' written notice to the registrar. Such bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such proof on account of damage to property in excess of one hundred dollars (\$100.00) or injury to, including death of a person or persons resulting from the ownership, maintenance, use or operation hereafter of a motor vehicle, upon the filing of notice to that effect by the registrar in the office of the clerk of the district court of the county where such real estate shall be located, and the clerk of any such district court receiving such notice shall keep proper books for indexing such liens and all such liens shall be filed and entered therein, showing the judgment creditors, the names of the judgment debtors and bondsmen in alphabetical order, the date and amount of the judgment, and upon the satisfaction of said judgment, the date thereof.

Such proof of ability to respond in damages may also be evidence presented to the registrar of a deposit by such person with the state treasurer or other proper fiscal officer of a sum of money or collateral in form satisfactory to the registrar amounting to one thousand two hundred fifty dollars (\$1250.00). Subject to the approval of the registrar, the said state treasurer or other proper fiscal officer shall accept any such deposit and shall issue a receipt therefor. The registrar shall approve such deposit by or on behalf of any person except where a judgment theretofore recovered against such person shall not have been paid in full.

Additional evidence of ability to respond in damages, as required by this act, shall be furnished the registrar at any time upon his demand. [L. '37, Ch. 129, § 4. Approved March 15, 1937; in effect May 1, 1937.]

1754.15. Bond or money to satisfy judgment — attachment — action on bond —

foreclosure of lien. A bond, money or collateral filed or deposited by or on behalf of any person under the provisions of the preceding section, shall be held by the registrar or said treasurer to satisfy, in accordance with the provisions of this act, any execution issued against such person on a judgment for damages, as aforesaid, arising out of the ownership, maintenance, use or operation of a motor vehicle as aforesaid. Money or collateral so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid. If such judgment rendered against the principal on the surety company or real estate individual bond given under the provisions of this act shall not be satisfied within thirty (30) days after it has become final as hereinbefore provided, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the state against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond; and any judgment debtor enforcing such lien may sell the real estate subject thereto, or so much as may be necessary to satisfy the same, under execution, in the manner provided for sale of real estate under execution. [L. '37, Ch. 129, § 5. Approved March 15, 1937; in effect May 1, 1937.]

1754.16. Operating records of drivers — abstracts — registrar to furnish insurance carrier — fee. The registrar shall upon request furnish any insurance carrier, person, or surety a certified abstract of the operating record of any person subject to the provisions of this act, which abstract shall fully designate the motor vehicles, (if any) registered in the name of such person, and if there shall be no record of any conviction of such person of a violation of any provision of any statute relating to the operating of a motor vehicle or of any injury or damage caused by such person as herein provided, the registrar shall so certify. The registrar shall collect for each such certificate the sum of one dollar. [L. '37, Ch. 129, § 6. Approved March 15, 1937; in effect May 1, 1937.]

1754.17. Vehicle operator's financial ability — information — registrar's duty to furnish. The registrar shall furnish any person who may have been injured in person or property by any motor vehicle, upon written request, with all information of record in his office pertaining to the evidence of the ability of any operator or owner of any motor vehicle

to respond in damages. [L. '37, Ch. 129, § 7. Approved March 15, 1937; in effect May 1, 1937.

1754.18. Suspended license — operator to return — failure — penalty — duty of police.

Any operator or any owner, whose operator's license or certificate of registration shall have been suspended as herein provided, or whose policy of insurance or surety bond shall have been canceled or terminated, or who shall neglect to furnish additional evidence of ability to respond in damages upon the request of the registrar shall immediately return to the registrar his operator's license, certificate of registration and the number plates issued thereunder. If any person shall wilfully fail to return to the registrar the operator's or chauffeur's license, certificate or certificates of registration and the number plates issued thereunder as provided herein, the registrar shall forthwith direct any state policeman or other police officer to secure possession thereof and to return the same to the office of the registrar. Any person wilfully failing to return such operator's or chauffeur's license or such certificate or certificates and number plates shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00), and such penalty shall be in addition to any penalty imposed for any violation of any of the provisions of section 2 [1754.12] of this act. The amount of such fine shall be paid in the manner provided for the payment of fines for violations of the motor vehicle laws. [L. '37, Ch. 129, § 8. Approved March 15, 1937; in effect May 1, 1937.

1754.19. Bond, policy, or deposit — return to operator — procedure — substitutions.

The registrar shall cancel such bond or return such proof of insurance, or the said treasurer shall with the consent of the registrar, return such money or collateral to the person furnishing the same at any time after three years shall have elapsed since the filing of such bond or proof or the making of such deposit, provided that during the three years' period immediately preceding such person shall not have been convicted of, pleaded guilty to or forfeited bond or collateral given for any of the offenses specified in section 2 [1754.12] of this act, and provided further that no suit or judgment against him or damages as aforesaid arising from the ownership, maintenance, use or operation hereafter of a motor vehicle shall then be pending or outstanding and unstayed or unsatisfied, as aforesaid; and the affidavit of such person, showing fulfillment of these requirements shall be sufficient proof thereof in the absence of evidence to the contrary

before the registrar. The registrar shall direct the return of any money or collateral to the person entitled thereto, at any time upon the acceptance and substitution by or on behalf of the person required to furnish the same, of other evidence of such person's ability to respond in damages, or, at any time after three years from the expiration of the latest registration or license issued to such person, or at any time in the event of the death or permanent incapacity of such person to own and/or operate a motor vehicle, or upon other good cause shown therefor, provided no written notice shall have been filed with the registrar stating that a suit for damages, as aforesaid arising out of the ownership, maintenance, use or operation of a motor vehicle, as aforesaid, has been brought against such person, and upon the filing by such person with the registrar of an affidavit that he has abandoned his residence in this state or that he has made a bona fide sale of all motor vehicles owned by him and does not intend to own or operate any motor vehicle in this state for a period of one or more years. [L. '37, Ch. 129, § 9. Approved March 15, 1937; in effect May 1, 1937.

1754.20. Suspended certificate of registration — transfer.

If an owner's certificate of registration has been suspended under the provisions of this act, such certificate shall not be transferred nor the motor vehicle in respect of which such certificate was issued, registered in another name, where the registrar has reasonable grounds to believe that such transfer or registration is proposed for the purpose or will have the effect of defeating the purpose of this act. Provided, however, that such transfer of registration shall be permitted upon the furnishing of proof of financial responsibility to the registrar by such transferee whenever the registrar shall deem it necessary in furtherance of the purposes of this section. [L. '37, Ch. 129, § 10. Approved March 15, 1937; in effect May 1, 1937.

1754.21. Liability insurance — application of act.

Nothing in this act contained shall be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by special act, and such policies, if endorsed to conform to the requirements of this act shall be accepted as proof of financial responsibility when required under this act; nor shall anything in this act contained be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance, operation or use by other persons in the insured's employ or in his behalf of motor

vehicles not owned by the insured. [L. '37, Ch. 129, § 11. Approved March 15, 1937; in effect May 1, 1937.]

1754.22. Violations — penalties. Any person who shall forge, or without authority, sign any evidence of ability to respond in damages as required by the registrar in the administration of this act and any nonresident who shall operate a motor vehicle in this state from whom the privilege of operating any motor vehicle has been withdrawn as provided in section 3 [1754.13] hereof, shall be fined not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00) or imprisoned not more than thirty days or both. [L. '37, Ch. 129, § 12. Approved March 15, 1937; in effect May 1, 1937.]

1754.23. Motor vehicle liability policy — definition — requisites — separate policies — claims — cancellation of policy — reimbursement of insurance carrier — binder — delivery — endorsement. “Motor vehicle liability policy”, as used in this act, shall be taken to mean a policy of liability insurance issued by an insurance carrier authorized to transact business in this state or issued by an insurance carrier authorized to transact business in the state or province in which the motor vehicle or motor vehicles therein described is registered, or if none be described, then in the state in which the insured resides to the person therein named as insured, which policy shall either (1) designate, by explicit description or other adequate reference, all motor vehicles with respect to which coverage is intended to be granted by said policy, and shall insure the insured named therein and any other person using or responsible for the use of any such motor vehicle with the consent, express or implied, of such insured, against loss from the liability imposed by law upon such insured or upon such other person for injury to or death of any person, other than such insured and such person or persons as may be covered, as respects such injury or death by any workmen's compensation law, and/or for damage to property, except property of others in charge of the insured or of his employees or other agents growing out of the ownership, maintenance, use or operation of any such motor vehicle within the continental limits of the United States of America or the Dominion of Canada; or which policy shall, in the alternative, (2) insure the person therein named as insured against loss from the liability imposed by law upon such insured for injury to or death of any person, other than such insured and such person or persons as may be covered as respects such injury or death by any workmen's compensation law, and/or for damage to property, except prop-

erty of others in charge of the insured or of his employees or other agents growing out of the maintenance, operation or use by such insured of any motor vehicle, except a motor vehicle registered in the name of such insured, and occurring while such insured is personally in control, as driver or occupant, of such motor vehicle within the continental limits of the United States of America or the Dominion of Canada, in either case to the amount or limit of \$500.00, exclusive of interest and costs, on account of injury to or death of any one person, and subject to the same limit as respects injury to or death of any one person, of \$1,000.00, exclusive of interest and costs, on account of any one accident resulting in injury to or death of more than one person; and of \$250.00, for damage to property of others, as herein provided, resulting from any one accident; or a binder pending the issuance of any such policy, or an endorsement to an existing policy both as hereinafter provided; provided, however, that this section shall not be construed as preventing an insurance carrier from granting in a “motor vehicle liability policy” any lawful coverage in excess of or in addition to the coverage herein provided for or from embodying in such policy any agreements, provisions or stipulations not contrary to the provisions of this act and not otherwise contrary to law. And provided further, that separate concurrent policies, whether issued by one or several carriers, covering, respectively, (a) personal injury or death, as aforesaid, and (b) property damage, as aforesaid, shall be termed “a motor vehicle liability policy”, within the meaning of this act.

Except as in section 12 [1754.22] of this act provided, no motor vehicle liability policy shall be issued or delivered in this state until a copy of the form of policy shall have been on file with the commissioner of insurance for at least thirty (30) days, unless sooner approved in writing by such commissioner, nor if within said period of thirty (30) days such commissioner shall have notified the carrier in writing that in his opinion, specifying the reasons therefor, the form of policy does not comply with the provisions of this act. The commissioner of insurance shall approve any form of policy which specifies the name, address and business if any of the insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and contains an agreement that the insurance thereunder is provided in accordance with the coverage defined in this section, as respects personal injury and death or property damage or both, and is subject to all the provisions of this act.

Every such motor vehicle liability policy shall be subject to the following provisions, whether or not contained therein:

(a) The liability of the insurance carrier under a motor vehicle liability policy shall become absolute whenever loss or damage covered by such policy occurs, and the satisfaction by the insured of a final judgment for such loss or damage shall not be a condition precedent to the right or obligation of the carrier to make payment on account of such loss or damage; provided always, that the insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in the policy. No such policy shall be cancelled or annulled as respects any loss or damage, by any agreement between the carrier and the insured after the said insured has become responsible for such loss or damage, and any such cancellation or annulment shall be void.

The policy may provide that the insured, or any other person covered by the policy shall reimburse the insurance carrier for payments made on account of any loss or damage claim or suit involving a breach of the terms, provisions or conditions of the policy; and further, if the policy shall provide for limits in excess of the limits specified in this section, the insurance carrier may plead against any plaintiff, with respect to the amount of such excess limits of liability, any defenses which it may be entitled to plead against the insured, and any such policy may further provide for the prorating of the insurance thereunder with other applicable valid and collectible insurance.

(b) The policy, the written application therefor, if any, and any rider or endorsement which shall not conflict with the provisions of this act shall constitute the entire contract between the parties.

(c) The insurance carrier shall, upon the request of the insured, deliver to the insured for filing, or at the request of the insured shall file direct, with the registrar of motor vehicles an appropriate certificate in conformity with the provisions of section 5 [1754.15] of this act.

(d) Any carrier authorized to issue motor vehicle liability policies may, pending the issue of such a policy, execute an agreement, to be known as a "binder"; or may, in lieu of such a policy, issue an endorsement to an existing policy. Every such binder or endorsement shall be subject to the provisions of this section and shall be construed to provide indemnity or insurance in like manner and to the same extent as a motor vehicle liability

policy. [L. '37, Ch. 129, § 13. Approved March 15, 1937; in effect May 1, 1937.]

1754.24. Definitions. The following words, as used in this act, shall have the following meanings:

(a) The singular shall include the plural; the masculine shall include the feminine and neuter, as requisite.

(b) "Person" shall include individuals, partnerships, corporations, receivers, referees, trustees, executors and administrators; and shall also include the owner of any motor vehicle as requisite; but shall not include the State or any political subdivision thereof.

(c) "Motor vehicle" shall include trailers, motoreycles and tractors.

(d) "Province" shall mean any province of the Dominion of Canada. [L. '37, Ch. 129, § 14. Approved March 15, 1937; in effect May 1, 1937.]

1754.25. Rules and regulations — registrar to make. The registrar shall make rules and regulations necessary for the administration of this act. [L. '37, Ch. 129, § 15. Approved March 1, 1937; in effect May 1, 1937.]

1754.26. Act cumulative. Nothing herein shall be construed as preventing the plaintiff in any action at law from relying for security upon the other processes provided by law. [L. '37, Ch. 129, § 16. Approved March 1, 1937; in effect May 1, 1937.]

Section 17 is partial invalidity saving clause.

CHAPTER 151B

UNIFORM ACCIDENT REPORTING ACT

ARTICLE I

Words and Phrases Defined

Section

1754.27. Definitions.

1754.28. (a) Registrar. (b) Supervisor.

ARTICLE II

Accidents

Section

1754.29. Accidents involving death or personal injuries—penalties.

1754.30. Accident involving damage to vehicle—penalty.

1754.31. Duty to give information and render aid.

1754.32. Duty upon striking unattended vehicle.

1754.33. Duty upon striking fixtures upon highway.

1754.34. Immediate reports of accidents—report by coroner.

1754.35. Written reports of accidents — reports by witnesses — law enforcement officers' reports.

1754.36. When driver unable to report.

1754.37. Accident report forms.

1754.38. Coroners to report.

Section

- 1754.39. Garages to report.
 1754.40. Accident reports confidential.
 1754.41. Supervisor to tabulate and analyze accident reports.
 1754.42. Any incorporated city may require accident reports.

ARTICLE III

Effect of and Short Title of Act

Section

- 1754.43. Uniformity of interpretation.
 1754.44. Short title.
 1754.45. Constitutionality—partial invalidity saving clause.

ARTICLE I

Words and Phrases Defined

1754.27. Definitions. The following words and phrases used in this act shall, for the purpose of this act, have the meanings respectively ascribed to them in this article. [L. '39, Ch. 210, § 1. Approved March 17, 1939.]

1754.28. (a) Registrar. The registrar of motor vehicles of this state.

(b) Supervisor. The Montana highway patrol board, its duly appointed supervisor and patrolmen. [L. '39, Ch. 210, § 2. Approved March 17, 1939.]

ARTICLE II

Accidents

1754.29. Accidents involving death or personal injuries — penalties. (a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of section 5 [1754.31]. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment for not less than thirty (30) days nor more than one (1) year, or by fine of not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000.00), or by both such fine and imprisonment.

(c) The registrar shall revoke the operator's or chauffeur's license of the person so convicted. [L. '39, Ch. 210, § 3. Approved March 17, 1939.]

1754.30. Accident involving damage to vehicle — penalty. The driver of any vehicle involved in an accident resulting only in dam-

age to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of section 5 [1754.31]. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop, or comply with said requirements under such circumstances shall be guilty of a misdemeanor. [L. '39, Ch. 210, § 4. Approved March 17, 1939.]

1754.31. Duty to give information and render aid. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person. [L. '39, Ch. 210, § 5. Approved March 17, 1939.]

1754.32. Duty upon striking unattended vehicle. The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck, a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof. [L. '39, Ch. 210, § 6. Approved March 17, 1939.]

1754.33. Duty upon striking fixtures upon highway. The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license and shall make report of such accident

when and as required in section 9 [1754.35] hereof. [L. '39, Ch. 210, § 7. Approved March 17, 1939.]

1754.34. Immediate reports of accidents—report by coroner. (a) The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately by the quickest means of communication give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the supervisor.

(b) Every coroner or other official performing like functions upon learning of the death of a person in his jurisdiction as the result of a traffic accident shall immediately notify the nearest office of the supervisor. [L. '39, Ch. 210, § 8. Approved March 17, 1939.]

1754.35. Written reports of accidents—reports by witnesses—law enforcement officers' reports. (a) The driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of twenty-five dollars (\$25.00) or more shall, within twenty-four (24) hours after such accident, forward a written report of such accident to the supervisor.

(b) The supervisor may require any driver of a vehicle involved in an accident, of which report must be made as provided in this section, to file supplemental reports whenever the original report is insufficient, and may require witnesses of accidents to render reports.

(c) Every law enforcement officer who in the regular course of duty, investigates a motor vehicle accident, of which report must be made as required in this section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within twenty-four (24) hours after completing such investigation, forward a written report of such accident to the supervisor. [L. '39, Ch. 210, § 9. Approved March 17, 1939.]

1754.36. When driver unable to report. Whenever the driver of a vehicle is physically incapable of making an immediate or a written report of an accident as required in sections 8 and 9 [1754.34, 1754.35], and there was another occupant in the vehicle at the time of the accident capable of making such report, such occupant shall make or cause to be made the report not made by the driver. [L. '39, Ch. 210, § 10. Approved March 17, 1939.]

1754.37. Accident report forms. (a) The supervisor shall prepare and upon request supply to police departments, coroners, sheriffs, garages and other suitable agencies or individuals, forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by persons involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the causes, conditions then existing, and the persons and vehicles involved.

(b) Every accident report required to be made in writing shall be made on the appropriate form approved by the supervisor and shall contain all of the information required therein unless not available. [L. '39, Ch. 210, § 11. Approved March 17, 1939.]

1754.38. Coroners to report. Every coroner, or other official performing like functions, shall on or before the 10th day of each month report in writing to the supervisor the death of any person within his jurisdiction during the preceding calendar month as the result of an accident involving a motor vehicle and the circumstances of such accident. [L. '39, Ch. 210, § 12. Approved March 17, 1939.]

1754.39. Garages to report. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident of which report must be made as provided in section 9 [1754.35], or struck by any bullet, shall report to the supervisor within twenty-four hours after such motor vehicle is received, giving the engine number, registration number and the name and address of the owner or operator of such vehicle. [L. '39, Ch. 210, § 13. Approved March 17, 1939.]

1754.40. Accident reports confidential. All required accident reports and supplemental reports shall be without prejudice to the individual so reporting and shall be for the confidential use of the supervisor or other state agencies having use for the records for accident prevention purposes, except that the supervisor may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident. No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the supervisor shall furnish upon demand of any person who has, or claims to have, made such a report or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the supervisor solely to

prove a compliance or a failure to comply with the requirement that such a report be made to the supervisor. [L. '39, Ch. 210, § 14. Approved March 17, 1939.

1754.41. Supervisor to tabulate and analyze accident reports. The supervisor shall tabulate and may analyze all accident reports and shall publish annually or at more frequent intervals statistical information based thereon as to the number and circumstances of traffic accidents. [L. '39, Ch. 210, § 15. Approved March 17, 1939.

1754.42. Any incorporated city may require accident reports. Any incorporated city, town, village, or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of such accident or a copy of any report herein required to be filed with the supervisor. All such reports shall be for the confidential use of the city department and subject to the provisions of section 14 [1754.40] of this act. [L. '39, Ch. 210, § 16. Approved March 17, 1939.

ARTICLE III

Effect of and Short Title of Act

1754.43. Uniformity of interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [L. '39, Ch. 210, § 17. Approved March 17, 1939.

1754.44. Short title. This act will be cited as the uniform accident reporting act. [L. '39, Ch. 210, § 18. Approved March 17, 1939.

1754.45. Constitutionality — partial invalidity saving clause. If any part or parts of this act shall be held to be unconstitutional such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional. [L. '39, Ch. 210, § 19. Approved March 17, 1939.

Section 21 repeals conflicting laws.

CHAPTER 152

REGISTRATION OF MOTOR VEHICLES — DEALERS — NONRESIDENTS — PRO- TECTION OF TITLES OF MOTOR VEHICLES

Section

1755.4, 1755.5. Repealed.

1755.5. (Erroneously numbered 1775.5) repealed.

Section

- 1757.1. State owned vehicles—lettering—kinds and size of letters—vehicles in the service of the governor and highway patrol excepted.
- 1757.2. Violation a misdemeanor.
- 1758. Certificates of registration and ownership—record—duty of registrar—certificates—issuance—form and contents—to whom.
- 1758.2. Transfer of title or interest—procedure—acknowledgment—filing—old certificate—surrender—vehicle transferred to dealer—notice to registrar—endorsement of certificate—new certificate—when transfer complete—by operation of law—re-registration—death of owner—assignment of title—record—duty of registrar—dealers.
- 1758.3. Chattel mortgages and conditional sales contracts on motor vehicles—creditors and subsequent purchasers—filing unnecessary—lien—duration—who registered as owner—notice—default—procedure—payment and surrender of certificate—failure—penalty—notice by registrar of lien—fees—disposition.
- 1758.4. Fee for original certificate of ownership and transfer of title.
- 1759. Application for registration of motor vehicles and payment of license fees thereon—blanks—contents—lienors—description of vehicle—license number for prior year—assessment fees and taxes—payment—vehicles in stock or storage—power of registrar.
- 1759.2. Issuance of receipt and assignment of number plates—county treasurer—duty—procedure—shipping plates—segregation of taxes.
- 1759.3. Disposition of taxes and license fees collected—county treasurer—duty—date—license fund credited—prorating costs and expenses—prorating fees to county.
- 1759.4. Application for dealer's license—fee—time—license plates and number—use of dealers' plates—violations—penalty.
- 1759.5. License plates—necessity—display—plates issued for other vehicles—use—penalty.
- 1760. Registration fees—fixed fees—amount—dealers in motor vehicles—statement—contents—makes handled—franchise to sell—fees for various kinds of vehicles—equipment—purpose of use—disposition of fees—motor vehicle department—expenses—proration among counties—cities having various populations—city road fund—application—county fees—application—six-month fees—dealers' fees—separate places of business—successors in business—transfer of certificate of registration—government-owned vehicles—applicability of act.
- 1760.7. Foreign vehicles used in gainful occupation—registrar of motor vehicles may make reciprocal agreements to exempt.
- 1760.11. Non-resident motorists—use of state highways.
- 1760.12. Same—accidents—service of process on secretary of state.
- 1760.13. Same—appointment of secretary of state for service of process—effect of service—exceptions.

Section

- 1760.14. Same—how service made—fee—notice by registered mail—personal service—mailing copy of process—continuance.
 1760.15. Same—fee taxed against costs.
 1760.16. Same—record to be kept.
 1763.8a. New motor vehicles—towed or driven—certificate of mileage—labeling of vehicle—violation of act—penalty.
 1763.8b. Demonstrating vehicles—application of act.

1755.4, 1755.5. Repealed. That section 1755.4 and section 1755.5 of the revised codes of Montana, 1935, originally enacted as section 2, chapter 171, laws of the twenty-first legislative assembly of the state of Montana, 1929, erroneously numbered section 1775.5, revised codes, Montana, 1935, shall be, and the same are hereby expressly repealed. [L. '37, Ch. 72, § 10. Approved March 2, 1937, and in effect December 1, 1937.]

Section 11 is partial invalidity saving clause.

Section 12 repeals conflicting laws.

1755.5. (Erroneously numbered 1775.5) repealed. See § 1755.4.

1757.1. State owned vehicles — lettering — kinds and size of letters — vehicles in the service of the governor and highway patrol excepted. Every motor vehicle owned by the state of Montana shall be indelibly and conspicuously lettered on each side thereof, in plain letters not less than two and one-half (2½) inches high, with the words "State of Montana" with the name of the proper department or institution inserted under the words "State of Montana". Such words shall be kept clear, distinct and visible at all times; provided, however, that the provisions of this act shall not be applicable to any such motor vehicle in the personal service of the governor or the highway patrol of this state, except that upon the front doors of any motor vehicle in their service there shall be placed the great seal of the state of Montana. [L. '39, Ch. 189, § 1. Approved March 17, 1939.]

1757.2. Violation a misdemeanor. Any person violating the provisions of this act shall be guilty of a misdemeanor. [L. '39, Ch. 189, § 2. Approved March 17, 1939.]

Section 3 repeals conflicting laws.

1758. Certificates of registration and ownership — record — duty of registrar — certificates — issuance — form and contents — to whom. Upon receiving the duplicate of an application for registration, duly executed in proper form, the registrar of motor vehicles shall cause to be entered the information contained in said application upon the corresponding records in his office and shall furnish the applicant a certificate of registration. At the same time he shall issue to any conditional

sales vendor or other person holding title to the vehicle or to the mortgagee thereof, a certificate of ownership. Both a certificate of registration and a certificate of ownership shall be issued to any applicant who is both the owner (registrant) and legal owner as defined by this act. Said certificates shall meet the following requirements as to form:

(a) The certificate of registration and the certificate of ownership shall each contain upon the face thereof, (1) the date issued, (2) the registration number assigned to the owner and to the vehicle, (3) the name and complete address of the registrant and the legal owner, if not the same, (4) a description of the registered vehicle, including the year built, (5) any lien of the legal owner in the amount due at date of registration, and such other statement of facts as may be determined by the registrar.

(b) The reverse side of the certificate of ownership only shall contain forms of notice to the registrar of a transfer of the title or interest of the owner or legal owner and application for registration by the transferee, and such other statement on forms as may be determined by the registrar. [L. '37, Ch. 72, § 5, amending R. C. M. 1935, § 1758. Approved March 2, 1937, and in effect December 1, 1937.]

Section 11 is partial invalidity saving clause.

Section 12 repeals conflicting laws.

1758.2. Transfer of title or interest — procedure — acknowledgment — filing — old certificate — surrender — vehicle transferred to dealer — notice to registrar — endorsement of certificate — new certificate — when transfer complete — by operation of law — re-registration — death of owner — assignment of title — record — duty of registrar — dealers. (a) Upon a transfer of the title or interest of a legal owner or owners in or to a vehicle registered under the provisions of this act as hereinbefore required, the person or persons whose title or interest is to be transferred and the transferee shall write their signatures with pen and ink upon the certificate of ownership issued for such vehicle, together with the address of the transferee, in the appropriate spaces provided upon the reverse of such certificate, and their signature must be acknowledged before a notary public.

(b) Within ten (10) days thereafter, the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration to the registrar, who shall file the same upon receipt thereof, and no certificate of title and certificate of registration shall be issued by the registrar of motor vehicles until the outstanding certificates are

surrendered to that officer or their loss established to his reasonable satisfaction.

(e) The provisions of subdivision (b) of this section, requiring a transferee to forward the certificate of ownership after endorsement and the certificate of registration to the registrar, shall not apply in the event of the transfer of a vehicle to a dealer intending to resell such vehicle and who operates the same only for demonstration purposes, but every such transferee, shall upon transferring his interest or title to another, give notice of such transfer to the registrar and endorse the certificate of ownership as herein provided and deliver the certificate of ownership to the new legal owner and the certificate of registration to the new owner.

(d) The registrar upon receipt of the certificate of ownership properly endorsed as required herein and the certificate of registration of such vehicle, shall register such vehicle as hereinbefore provided with reference to an original registration, and shall issue to the owner and legal owner entitled thereto, by reason of such transfer, a new certificate of registration and certificate of ownership respectively in the manner and form hereinbefore provided for original registration.

(e) Until said registrar shall have issued said new certificate of registration and certificate of ownership as hereinbefore in subdivision (d) provided, delivery of such vehicle shall be deemed not to have been made and title thereto shall be deemed not to have passed and said intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose.

(f) In the event of the transfer by operation of law of the title or interest of a legal owner or owner in and to a vehicle registered under the provisions of this act, as upon inheritance, devise or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in performance of the terms of a lease or executory sales contract, or otherwise than by the voluntary act of the person whose title or interest is so transferred, the executor, administrator, receiver, trustee, sheriff or other representatives or successor in interest, of the person whose title or interest as so transferred shall forward to the registrar of motor vehicles an application for registration in the form required for an original application for registration, together with a verified or certified statement of the transfer of such title or interest which statement shall set forth the reason for such involuntary transfer, the title or interest so transferred, the name or names of the person or persons whose title or interest is sought to be transferred, the name or names and addresses of

the person or persons to who [whom] such title or interest is to be transferred, the process of procedure effecting such transfer and such other information as may be requested by the registrar and with such statement shall be furnished such evidence and instruments as may be otherwise required by law to effect a transfer of legal title to or an interest in chattels as may be required in such cases, and in the event the registrar shall be satisfied that such transfer is regular and that all formalities as required by law have been complied with, he shall cause to be sent to the owner and legal owner notice of such intended transfer and thereafter, but not less than five (5) days thereafter, shall register such vehicle or effect the transfer of the registration thereof and shall issue a new certificate of registration and a new certificate of ownership to the person or persons entitled thereto. The notice herein required shall be deemed complied with by deposit in the post office in Deer Lodge, such notice, postage prepaid, addressed to such person or persons at their last known addresses.

In the event of the death of an owner or legal owner of not more than one (1) motor vehicle, trailer or semi-trailer registered hereunder, and not exceeding the value of one thousand dollars (\$1,000.00), without leaving other property necessitating the procuring of letters of administration or letters testamentary, then the surviving husband or wife or other heir, unless such property is by will otherwise bequeathed, may secure transfer of the registration of the title or interest of the deceased in and to such vehicle to the name of the surviving husband or wife or other heir, as above mentioned, upon filing with the registrar an affidavit of such person setting forth the fact of such survivorship and the names and addresses of any other heirs and such other facts as are hereby made necessary to entitle the affiant to a transfer, and thereupon the registrar is authorized to make such transfer of the registration of such vehicle.

Nothing in the foregoing subdivision of this section shall prevent a legal owner from assigning his title or interest in or to a vehicle registered under the provisions of this act to another legal owner without the consent of and without affecting the interest of the holder of the certificate of registration thereof.

Upon filing with the registrar of a certificate of ownership endorsed by the legal owner and a transferee of legal ownership, the registrar shall enter the name of the new legal owner upon the records of the department and shall issue a new certificate of ownership to the new legal owner and a new

certificate of registration to the registered owner in the form hereinbefore provided for original registration.

(g) Every dealer, upon transferring any motor vehicle to any person other than a dealer shall immediately give written notice of such transfer to the registrar upon the official form provided by the registrar. Every such notice shall contain the date of transfer, the names and addresses of the transferor and transferee and such description of the vehicle as may be called for in such official form. [L. '37, Ch. 72, § 6, amending R. C. M. 1935, § 1758.2. Approved March 2, 1937, and in effect December 1, 1937.

Section 11 is partial invalidity saving clause.

Section 12 repeals conflicting laws.

1758.3. Chattel mortgages and conditional sales contracts on motor vehicles — creditors and subsequent purchasers — filing unnecessary — lien — duration — who registered as owner — notice — default — procedure — payment and surrender of certificate — failure — penalty — notice by registrar of lien — fees — disposition. (a) No chattel mortgage or conditional sales contract on a motor vehicle shall be valid as against creditors or subsequent purchasers or encumbrancers until the mortgage or conditional sales vendor therein named is registered as the legal owner thereof as herein provided.

(b) A chattel mortgage on a motor vehicle is hereby excepted from the provisions of sections 8278 and 8280 inclusive, and a conditional sales contract on a motor vehicle is hereby excepted from the provisions of sections 7594 and 7596 inclusive, insofar as they relate to the filing of chattel mortgages and conditional sales contracts except the duration of said liens shall be and remain as specified in section 8279.

(c) Whenever a mortgagee in a chattel mortgage deposits with the registrar of motor vehicles the original, or a copy of said mortgage accompanied by a certificate of a notary certifying to the same as a true and correct copy of the original, the said mortgagee shall be registered as the legal owner under the provisions of this act, or whenever a conditional sales vendor deposits with the registrar a conditional sales contract or a copy thereof accompanied by a certificate of a notary public certifying to the same as a true and correct copy of the original, the said conditional sales vendor shall be registered as the legal owner under the provisions of this act. Such registration and the depositing of said mortgage or conditional sales contract of a copy thereof shall be constructive notice of the said mortgage or contract and its contents

to subsequent purchasers or encumbrancers. The conditional sales vendor and/or mortgagee shall have ten (10) days from and after execution of said conditional sales contract or mortgage within which to file said original or certified copies of said documents with the registrar of motor vehicles during which period the rights secured thereby shall be prior and superior to the lien or claim of any subsequent purchaser or encumbrancer, and thereafter rights shall accrue as of the time of filing with the registrar as aforesaid.

(d) Upon default under a chattel mortgage covering a motor vehicle the mortgagee may foreclose his mortgage as in the case of other personal property, and upon default under a conditional sales contract covering a motor vehicle the vendor shall have the remedies prescribed by section 7597 upon delivery to the sheriff of the original instrument or a copy certified by the registrar of motor vehicles, and in case of attachment of motor vehicles, all the provisions of section 8283 shall be applicable except that deposits must be made with the registrar of motor vehicles instead of the county treasurer.

(e) In the event any conditional sales vendor or assignee or chattel mortgagee or assignee fails to surrender certificate of ownership to the owner of motor vehicle within twenty (20) days after receiving final payment on conditional sales contract, assignment or mortgage, he shall be liable to pay said owner the sum of ten dollars (\$10.00) and the further sum of one dollar (\$1.00) for each and every day thereafter that he fails to surrender said certificate of ownership, recoverable in a civil action.

(f) In the event any conditional sales vendor or assignee, or chattel mortgagee or assignee fails to file a satisfaction of a chattel mortgage, assignment or conditional sales contract within 15 days after receiving final payment on such mortgage, assignment or conditional sales contract, he shall be required to pay to the registrar of motor vehicles the sum of one dollar for each and every day thereafter that he fails to file such satisfaction. All moneys paid to the registrar of motor vehicles under this section shall revert to the automobile theft fund.

(g) Upon receipt of any liens, notice of liens, attachments, etc., against the record of any motor vehicle registered in this state, the registrar shall, within twenty-four (24) hours, mail to the legal owner, conditional vendor, mortgagee, or assignee of any thereof, and also to the registrant and assignee, a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien and in the case of attachment the

full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor.

(h) It shall not be necessary to refile with the registrar of motor vehicles any instruments on file in the offices of the county clerks and recorders at the time this law takes effect.

(i) A fee of twenty-five cents (25c) shall be paid to the registrar of motor vehicles for filing satisfaction of chattel mortgages or conditional sales contracts. A fee of fifty cents (50c) shall be paid the registrar of motor vehicles for filing chattel mortgages, conditional sales contracts or assignments thereof, and also for issuing certificate to copy of chattel mortgage or conditional sales contract. [L. '37, Ch. 72, § 7, amending R. C. M. 1935, § 1758.3. Approved March 2, 1937; in effect December 1, 1937.]

Section 11 is partial invalidity saving clause.

Section 12 repeals conflicting laws.

1937. ✓ An assignee of a conditional sale contract by the seller of an automobile to a regular dealer in automobiles is estopped to assert title thereto as against the dealer's purchaser even though a copy of the sale contract and the assignment have been filed with the registrar of vehicles. *Rasmussen v. O. E. Lee & Co., Inc.*, 104 Mont. 278, 66 P. (2d) 119.

1937. ✓ Assignee of seller of truck on conditional sale contract held not liable for injuries caused by truck when driven by purchaser. *Coombes v. Letcher*, 104 Mont. 371, 66 P. (2d) 769.

1758.4. Fee for original certificate of ownership and transfer of title. A charge of one (\$1.00) dollar shall be made for issuance of an original certificate of ownership of title which shall be collected by the county treasurer for the registrar of motor vehicles the first time any vehicle is registered by any owner. Said charge of one dollar (\$1.00) shall be remitted to the registrar of motor vehicles by the county treasurer with each application for registration. Upon a transfer of registration by the owner, there shall be forwarded to the registrar of motor vehicles, the certificate of ownership or title and registration card, properly filled out and executed, together with a transfer fee of one dollar (\$1.00). [L. '37, Ch. 72, § 8, amending R. C. M. 1935, § 1758.4. Approved March 2, 1937, and in effect December 1, 1937.]

Section 11 is partial invalidity saving clause.

Section 12 repeals conflicting laws.

1759. Application for registration of motor vehicles and payment of license fees thereon — blanks — contents — lienors — description of vehicle — license number for prior year — assessment fees and taxes — payment — vehicles in stock or storage — power of registrar. Every owner of a motor vehicle operated or driven upon the public highways of this state

shall, for each motor vehicle owned, except as herein otherwise expressly provided, file, or cause to be filed, in the office of the county treasurer of the county wherein such motor vehicle is owned or taxable, an application for registration, or re-registration, upon blank form to be prepared and furnished by the registrar of motor vehicles, executed in duplicate, which application shall contain:

(1) Name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable.

(2) Name and address of conditional sales vendor, mortgagee or holder of other lien against said motor vehicle, with statement of amount owing under such contract or lien.

(3) Description of motor vehicle, including make, year model, engine and serial number, manufacturer's model or letter, weight, type of body and, if truck, the number of tons.

(4) In case of re-registration, the license number for the preceding year.

(5) Such other information as the registrar of motor vehicles may require.

Before filing such application with the county treasurer, the applicant shall submit the same to the county assessor of said county and said county assessor shall enter on said application in a space to be provided for that purpose, the full and true and the assessed valuation of said automobile for the year for which said application for registration is made.

The applicant shall, upon the filing of said application, (1) pay to the county treasurer the registration fee, as provided in section 1760 revised codes of Montana, 1935, and shall also at such time (2) pay the taxes assessed against said motor vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or re-registration may be accepted by the county treasurer. The county treasurer is hereby empowered to make full and complete investigation of the tax status of said vehicle and any applicant for registration or re-registration must submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer; provided, that nothing herein shall be deemed to conflict with the provisions of section 1756.6 revised codes of Montana, 1935, and the provisions hereof shall be construed in connection therewith.

The amount of taxes on said motor vehicle shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or re-registration and such determination shall be entered on the application form in a space provided therefor.

Motor vehicles are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be the subject of assessment, levy and taxation more than once in each year, viz., the first day in January in each year, which shall be the time of assessment for tax purposes of motor vehicles in stock, in dealers' possession or in dead storage, as well as in use, subsequent registrations, if any, of the same vehicle in the same year not being subject to payment of taxes.

The applicant for original registration of any wholly new and unused motor vehicle acquired by original contract after the first day in January of any year, and such vehicle shall not be subject to assessment and taxation for said vehicle until the first day in January of the year next succeeding, but nothing herein contained shall exempt such vehicle from taxation in the possession of any person on said assessment date.

Upon accepting application for registration or re-registration of any motor vehicle which is subject to taxation in this state on January 1st in any year, and upon payment of taxes, the county treasurer shall stamp on said application: "Taxes on this vehicle due January 1st of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration".

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application.

The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the fact. [L. '37, Ch. 72, § 1, amending R. C. M. 1935, § 1759. Approved March 2, 1937, and in effect December 1, 1937.]

Section 11 is partial invalidity saving clause.

Section 12 repeals conflicting laws.

1938. ✓ Mandamus would not lie against a county treasurer to compel him to issue license plates for an automobile on which neither the dealer from whom the machine was purchased by the applicant nor the applicant had paid the taxes, even though the assessor had willfully and unlawfully refused to enter the true valuation of the machine on the application and the applicant did not offer to pay such taxes, as a clear legal right was not shown by the purchaser for the relief. State ex rel. Sadler v. Evans, 106 Mont. 286, 77 P. (2d) 394.

1938. ✓ In mandamus against a county assessor to compel him to enter on an application for registration of an automobile the full, true, and assessed valuation thereof it was held that the writ was appropriate to compel such action and that a petition was sufficient which alleged the defendant's willful and unlawful refusal to comply with a request therefor, even though the machine was assessed to a dealer from whom the applicant purchased it. State ex rel. Sadler v. Evans, 106 Mont. 286, 77 P. (2d) 394.

1938. ✓ Section 1759 et seq. does not require a dealer to pay his tax on all of his cars in stock on January 1st, before he can sell any of them; nor that the purchaser of one of such cars shall pay the entire automobile tax of the dealer covering other cars before he is permitted to register and obtain his license plates for the one. The statute treats cars, not held in stock, but for "use" each as a separate unit and tax may be paid on one without paying the tax on the others, State ex rel. Sadler v. Evans, 106 Mont. 286, 77 P. (2d) 394, nor does section 2153, making a personal property tax a prior lien upon "any or all of such property," alter the case.

1938. ✓ Nothing in this act requires an applicant for registration of a motor vehicle to pay, in addition to the taxes for the current year for which application is made, delinquent taxes due upon the vehicle for assessments for prior years, when such delinquent tax is not a lien upon real estate, and in the absence of statute authorizing such a method of collecting taxes the right does not exist. State ex rel. Kleve v. Fischl, 106 Mont. 282, 77 P. (2d) 392.

1938. ✓ Sections 1759 et seq. are complied with if the purchaser of an automobile from a dealer pays only the tax on the particular car for which he applies for license plates. State ex rel. Sadler v. Evans, 106 Mont. 286, 77 P. (2d) 394.

1938. ✓ The intent and purpose of section 1759 et seq., is to insure the collection of the current property taxes on all automobiles authorized to use the highways. While the act fixes the first day of January as the time of assessment of "motor vehicles in stock, in dealers' possession, or in dead storage, as well as in use," the obvious purpose of this provision was to make it possible to carry out the other provisions of the act coupling the registration and the issuance of license plates with the payment of taxes. State ex rel. Sadler v. Evans, 106 Mont. 286, 77 P. (2d) 394.

1937. ✓ The objection that unlawful discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., a different method is used for enforcing payment of taxes on motor vehicles from that used in cases of other classes of personal property, in that the motor vehicle may not be used on the highways until the tax is paid and license cannot be secured for such operation until the tax is paid, and that if the vehicle is operated without a license the operator has committed a misdemeanor, held untenable, since the collection of taxes in an unusual way on account of the kind of property does not violate the uniformity provision of the constitution, but it is the levy or assessment of the tax which must be uniform, and not the means of enforcement. Wheir v. Dye, 105 Mont. 347, 73 P. (2d) 209.

1937. ✓ The objection that discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., taxes on motor vehicles are assessable as of January 1st, whereas other personal property is assessed for the purpose of taxation as of noon

the first Monday of March, is untenable, since the legislature may fix different dates for assessment of different classes of property, and motor vehicles are in a class different from other personal property. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. The objection that discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., a new motor vehicle, bought on December 31, is assessable the next day, whereas one purchased on the 2nd day of January following is not taxable until the following year, held untenable, since no exemption from taxation results, but the tax is simply shifted from one taxpayer to another. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. The objection that unlawful discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., the amount of taxes on motor vehicles is to be computed and determined on the basis of the levy of the year preceeding the current year of application for registration, while taxes for a particular year on all personal property except motor vehicles shall be paid at the rates levied for that year, and that such vehicles in the hands of dealers must pay taxes at the same rate, held untenable, since the law does not provide that the taxes are to be "levied or assessed," but that they are to be "computed and determined" on the basis of the levy of the year preceeding. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. The ease with which motor vehicles may be removed from the taxing district as compared with most other personal property is a sufficient reason for special treatment at the hands of the legislature and the difference in the case of the dealer in motor vehicles and that involving individuals likewise justifies the difference in the rate, for the dealer buys a motor vehicle, sells, and purchases another, which he in turn sells; as the capital invested yields several distinct profits during the year, while in the hands of an individual little or no profit may be realized from the investment. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. The objection that unlawful discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., double assessment and taxation is authorized, once while the motor vehicle is in the hands of the dealer and once in the same year while in the hands of the purchaser, was held untenable, because it is the duty of the county treasurer, where there is a double assessment for the same year, to collect only the tax justly due and make return of the facts under affidavit to the county clerk, and if the tax has not been paid by the dealer the obligation of the purchaser to pay it will be adjusted in the purchase price. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. The law concerning the registration, licensing, and taxation of motor vehicles, section 1759 et seq., as amended by L. '37, Ch. 72, does not violate the due process clause of the constitution. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. Section 2247 was not repealed by L. '37, Ch. 72 amending sections 1759 et seq., so that the provisions in section 2247, relating to adjustments of taxes so that the tax finally paid shall conform to the rate for the current year, applies to taxes on motor vehicles under L. '37, Ch. 72. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. The contention that by L. '37, Ch. 72, Rev. Codes, § 1759 et seq., the expense of taxing motor vehicles is greatly increased, and that undue burdens

are thereby laid upon taxing authorities and the taxpayers involves questions that are of no concern to the courts, since judicial tribunals of the state have no concern with the policy of legislation. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. The result of sections 1759 et seq., as amended by L. '37, Ch. 72, is stated by the supreme court as follows: "All persons who operate motor vehicles on the highways will pay the property tax on such vehicles when they secure their licenses, at the rate of taxation for the previous year. Taxes on all other personal property, including dealers' vehicles and those in dead storage, will pay at the rate for the current year. As to dealers and cars in dead storage, if secured by a sufficient lien on real estate, one-half the property tax will be paid in the month of November and the residue the following May. Section 2169.2, Rev. Codes. If they are not sufficiently secured, the assessment may be certified by the assessor and collected by the treasurer after notice, at the rate for the preceding year, with adjustments later to be made, so that the taxes conform to the current year. Chapter 200, Rev. Codes (section 2238 et seq.)." *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1759.2. Issuance of receipt and assignment of number plates — county treasurer — duty — procedure — shipping plates — segregation of taxes. Upon receipt of application for registration and payment of license fee and taxes as herein provided, the county treasurer shall file one copy of said application in his office and issue to the applicant a receipt executed in triplicate, delivering one copy of said receipt to the applicant, one copy to the county clerk and recorder and retaining one copy for his office; and he shall daily forward to the registrar of motor vehicles a duplicate copy of all applications for registration. The county treasurer shall also, and at the same time, assign such motor vehicle a distinctive number, viz., the license plate number, and deliver to the applicant two (2) license plates, as received from the registrar of motor vehicles which shall bear such distinctive numbers. The registrar shall ship said license plates to the various county treasurers by freight, so that they will be received by the county treasurer on or before January first of each year. It shall not be necessary for the county treasurer, in said receipt, to segregate the amount of said taxes for state, county, school district and municipal purposes. [L. '37, Ch. 72, § 3, amending R. C. M. 1935, § 1759.2. Approved March 2, 1937, and in effect December 1, 1937.]

Section 11 is partial invalidity saving clause.
Section 12 repeals conflicting laws.

1759.3. Disposition of taxes and license fees collected — county treasurer — duty — date — license fund credited — prorating costs and expenses — prorating fees to county. The county treasurer shall credit all taxes on motor vehicles so collected to a motor vehicle suspense fund and, at some time between

March 1st and March 10th of each year, and every sixty days thereafter, the county treasurer shall distribute the same in relative proportions required by the levies for state, county, school district and municipal purposes in the same manner as other personal property taxes are distributed. All motor vehicle license fees collected by the county treasurer shall be credited to the motor vehicle license fund hereby established. The cost of making and delivering license plates and identification marks, certificates and all other expenses of operating the motor vehicle department of the state of Montana shall be prorated by the registrar of motor vehicles among the several counties of the state in proportion to the number of cars registered in each county, and the registrar shall bill each county therefor by verified claim, and each county shall thereupon pay the amount so charged out of said motor vehicle license fund; provided, however, that each county shall receive credit for its pro-rata share of any fees or license money paid to the registrar of motor vehicles. The remainder in said motor vehicle license fund shall be transferred by the county treasurer at the end of each month to the road fund of said county and shall be used by the county for the purposes set forth in section 1760. [L. '37, Ch. 72, § 4, amending R. C. M. 1935, § 1759.3. Approved March 2, 1937, and in effect December 1, 1937.

Section 11 is partial invalidity saving clause.

Section 12 repeals conflicting laws.

1759.4. Application for dealer's license — fee — time — license plates and number — use of dealers' plates — violations — penalty. Every dealer in motor vehicles or automobile accessories shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for registration as a dealer on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein required. Each application must be accompanied by the registration fee hereinafter named. Dealers registration must be renewed and paid for annually, and an application for re-registration must be filed not later than January first of each year. Upon the registration of a dealer, the registrar of motor vehicles shall assign to such dealer a distinctive serial registration number as a dealer and furnish every dealer in motor vehicles with not less than two (2) sets of number plates, and as many more as the fee the dealer pays entitles the dealer to, which number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the word "dealer" or the letter "D".

A dealer is hereby prohibited from using or displaying dealer's license plates on any motor vehicle for any purpose other than the sale or demonstration for sale of a new or used car or truck or a service car used in direct connection with the business of a dealer. If it shall appear to the satisfaction of the registrar that any such dealer has used the dealer's license in a manner other than the one above set forth the registrar may revoke such dealer's license. Any dealer violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not less than twenty-five (\$25.00) dollars and not more than one hundred (\$100.00) dollars. [L. '37, Ch. 72, § 2, amending R. C. M. 1935, § 1759.4. Approved March 2, 1937, and in effect December 1, 1937.

Section 11 is partial invalidity saving clause.

Section 12 repeals conflicting laws.

1759.5. License plates — necessity — display — plates issued for other vehicles — use — penalty. Except as otherwise provided herein, no person shall operate a motor vehicle upon the public highways of this state without a license and unless such vehicle shall have been properly registered and shall have the proper number plates conspicuously displayed, one (1) on the front and one (1) on the rear of such vehicle, each securely fastened so as to prevent the same from swinging and unobstructed from plain view, except that trailers and semi-trailers shall have but one (1) number plate conspicuously displayed on the rear. No person shall display on such vehicle at the same time any number assigned to it under any motor vehicle law, except as in this act otherwise provided. It is further provided that it shall be unlawful to use license plates issued to one vehicle on any other vehicle, trailers or semi-trailers, or repainting old license plates to resemble current license plates and any person violating this provision shall be deemed guilty of a misdemeanor and shall be subject to the penalty as set out in section 1760.10 of the revised codes of Montana, 1935. [L. '37, Ch. 154, § 1, amending R. C. M. 1935, § 1759.5. Approved and in effect March 16, 1937.

Section 2 repeals conflicting laws.

1760. Registration fees — fixed fees — amount — dealers in motor vehicles — statement — contents — makes handled — franchise to sell — fees for various kinds of vehicles — equipment — purpose of use — disposition of fees — motor vehicle department — expenses — proration among counties — cities having various populations — city road fund — application — county fees — application — six-month fees — dealers' fees

— separate places of business — successors in business — transfer of certificate of registration — government-owned vehicles — applicability of act. Registration fees shall be paid upon registration or re-registration of motor vehicles, trailers, semi-trailers and dealers in motor vehicles in accordance with this act, as follows:

Dealers in motor vehicles other than motorcycles, a minimum fee of thirty dollars (\$30.00) which shall entitle such dealer to two (2) sets of number plates, and five dollars (\$5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars (\$2.00) additional fee for each additional set of number plates, as may be applied for by such dealer; provided, that each dealer be required to furnish the registrar of motor vehicles a statement under oath showing the makes of new motor vehicles handled by him and that he has a written current year's franchise with the manufacturer of such new motor vehicles handled by him or a written current year's franchise with a duly authorized distributor of such new motor vehicles handled by him, and the total number of each make sold by him during the preceding year, and that he not be issued a license unless he so conforms;

Dealers in motorcycles, fifteen dollars (\$15.00);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars (\$5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks, ten dollars (\$10.00);

Electrically driven passenger vehicles, ten dollars (\$10.00);

All motorcycles, two dollars (\$2.00);

Tractors and trucks of one (1) ton capacity or under, five dollars (\$5.00);

Tractors and trucks over one (1) ton and up to and including one and one-half ($1\frac{1}{2}$) tons capacity, ten dollars (\$10.00);

Tractors and trucks over one and one-half ($1\frac{1}{2}$) tons and up to and including two (2) tons capacity, twenty-two dollars and fifty cent (\$22.50);

Tractors and trucks over two (2) tons and less than three (3) tons capacity, thirty-seven dollars and fifty cents (\$37.50);

Tractors and trucks of three (3) tons and less than five (5) tons capacity, sixty dollars (\$60.00);

Tractors and trucks of five (5) tons capacity and over, two hundred dollars (\$200.00); provided that tractors shall not be construed as meaning farm tractors used on farms or

tractors used solely in logging operations but only such tractors as are a part of a unit to haul over the highways;

Busses shall be classed as motor trucks and licensed accordingly;

Trailers and semi-trailers, over one thousand (1000) pounds and not over one (1) ton, two dollars (\$2.00);

Trailers and semi-trailers, over one (1) ton and less than two (2) ton capacity fifteen dollars (\$15.00); over two (2) ton and less than three (3) ton capacity, twenty dollars (\$20.00); over three (3) ton and less than four (4) ton capacity, twenty-five dollars (\$25.00); over four (4) ton and less than five (5) ton capacity, thirty dollars (\$30.00); over five (5) ton capacity, two hundred dollars (\$200.00); provided that trailers owned by farmers and used in the transportation of his own livestock and his own farm produce with a five (5) ton capacity or more, shall be excluded from such provisions and the fee shall be five dollars (\$5.00). And be it further provided that trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and second hand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars (\$15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semi-trailers, when not equipped with pneumatic tires;

Bicycles with motor attachment, one dollar (\$1.00).

Tractors, as specified in this section, shall mean any motor vehicle used for towing a trailer or semi-trailer.

All license or registration fees collected by the county treasurer of the county in which any motor vehicle is registered shall be credited to the motor vehicle license fund of said county. The cost of making and shipping license plates and identification marks, certificates and other expenses of operating the motor vehicles department of the state of Montana shall be pro rated by the registrar of motor vehicles among the counties of the state in proportion to the number of cars registered in each county, and he shall bill each county therefor, by verified claim, and each county shall thereupon pay the amount so charged out of said motor vehicle license fund; provided, however, that each county shall receive credit for its pro rata share of any fees or license money paid to the registrar of motor vehicles. The remainder of the

funds in said motor vehicle license fund shall be used as follows:

(a) Fifty per cent (50%) of the net fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any incorporated city of the state of Montana, having a population of thirty-five thousand (35,000), or more, according to federal census of 1930, shall be held by county treasurer and segregated from other county road funds and be designated as "city road fund", to be used in city from which fees were derived for the construction of permanent streets within the incorporated limits of such city.

(b) The fees held in the city road fund, as hereinabove provided, shall be used by the city council of such city having the population of thirty-five thousand (35,000), or more, according to the federal census of 1930, only for the construction of permanent highways and streets within the boundaries of such incorporated city. Provided, that all construction of public highways and streets, the cost of which is to be paid out of the fund derived from the license fees as herein provided, shall be under the supervision of the county surveyor of the county within whose boundaries such city is situated, subject to the control of the said city council and surveyor to designate the public highway or street upon which the work is to be done, and the type of pavement to be used, and provided further, that the cost of supervision of the county surveyor shall not exceed five per cent (5%) of the cost of said work.

(c) The net fees derived from the registration of motor vehicles shall be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of the county from which the registration fee came, such fees excepting apportionment to city road fund, to be used by said county for the construction, repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county, including city streets forming component parts of arterial highways within the corporate cities of less population than thirty-five thousand (35,000), according to the federal census of 1930, within the boundaries of said county.

If any dealer, or motor vehicle, or trailer, or semi-trailer is originally registered six (6) months after the time of registration as set by law, the registration fee for the remainder of such year shall be one-half ($\frac{1}{2}$) of the regular fee above given.

A dealer in motor vehicles who shall maintain more than one (1) place of business or who shall maintain any branch establishment

or establishments, must register and pay a registration fee for each such place of business or establishment.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of one dollar (\$1.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchaser of such business.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semi-trailers or tractors owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers and semi-trailers. [L. '39, Ch. 125, § 1. Approved and in effect March 9, 1939. Amending R. C. M. 1935, as amended by L. '37, Ch. 138, § 1. Approved and in effect March 16, 1937.]

Section 2 is partial invalidity saving clause.

Section 3 repeals conflicting laws.

1937. ✓ Although administrative practice, long established and consistently followed, is impressive, when such practice is erroneously and illegally established it is without great persuasive effect. State ex rel. City of Butte v. Healy, 105 Mont. 227, 70 P. (2d) 437.

1937. ✓ Where the requirements of the statute have been met with relation to the division of the funds from motor license fees, and the passing of the appropriate part thereof into the fund known as the city road fund, the money in that fund becomes in fact city funds, just as much as other taxes collected by the county treasurer for the benefit of the city. State ex rel. City of Butte v. Healy, 105 Mont. 227, 70 P. (2d) 437.

1937. ✓ Motor vehicle license money collected by the county treasurer for the benefit of the city and to be expended in accordance with the statute, is city money, and it must be disbursed by the duly constituted authorities of the city in the manner provided by law. State ex rel. City of Butte v. Healy, 105 Mont. 227, 70 P. (2d) 437.

1937. ✓ This section does not mean that because the county surveyor is given authority to supervise in the manner provided by statute, he should supersede the city officials in the exercise of their statutory powers and authority with relation to the construc-

tion, improvement, and control of the streets and with relation to the expenditure of the city funds. State ex rel. City of Butte v. Healy, 105 Mont. 227, 70 P. (2d) 437.

1937. The contention that unless this section should be construed to give the county surveyor absolute control of the construction and improvement of city streets and expenditure therefor of motor vehicle license fees collected by the county treasurer for the benefit of the city, federal funds would be lost to the city, held untenable. State ex rel. City of Butte v. Healy, 105 Mont. 227, 70 P. (2d) 437.

1760.7. Foreign vehicles used in gainful occupation—registrar of motor vehicles may make reciprocal agreements to exempt. Before any foreign licensed motor vehicle shall be operated on the highways of this state for compensation or profit, or the owner thereof is using the vehicle while engaged in gainful occupation or business enterprise, in the state of Montana, including highway work, the same shall be registered and licensed in this state in the same manner as is required in the case of domestic owned vehicles of similar character not heretofore registered or licensed, and if the registrar of motor vehicles is satisfied as to the facts stated in the application, he shall register and license such vehicle and assign thereto an appropriate certificate, emblem or device, which shall at all times be displayed upon such vehicle, when operated or driven upon roads and highways of this state, during the period of the life of such license, providing, however, that the registrar of motor vehicles is authorized and empowered to enter into reciprocal agreements with any country, state or territory exempting from registration and licensing in Montana of the motor vehicle, trailer or semi-trailer of a resident of such country, state or territory when registered and licensed therein, when the laws of such country, state or territory extend the same privilege to, or authorize like reciprocal agreements with respect to motor vehicles, trailers and semi-trailers registered and licensed in the state of Montana and operated by a resident of this state upon the highways of such country, state or territory. Such reciprocal agreements shall not exempt the non-resident operator from obtaining the temporary permit provided in section 1760.2 nor shall any such agreement exempt any motor truck, registered and licensed under the laws of such country, state or territory, from registration and licensing, as hereinbefore provided. Within the meaning of this act a "motor truck" is a vehicle designed, used or maintained primarily for the transportation of property, or for the transportation of persons or property for hire. [L. '39, Ch. 93, § 1, amending R. C. M. 1935, § 1760.7. Approved and in effect March 1, 1939.

Section 2 repeals conflicting laws.

1760.11. Non-resident motorists — use of state highways. Subject to a compliance with the motor vehicle laws of this state and the acceptance of the provisions of this act, non-resident owners and operators of motor vehicles hereby are granted the privilege of using the highways, roads and streets of this state and its political subdivisions, and the use of such highways, roads and streets shall be deemed and construed to be an acceptance of the provisions of this act. [L. '37, Ch. 10, § 1. Approved and in effect February 10, 1937.

1939. This statute, sections 1760.11 to 1760.16 inclusive, is not invalid on the ground that it is class legislation for the reason that the classification is reasonable although it does not apply to all vehicles. State ex rel. Charette v. District Court, 107 Mont. 489, 86 P. (2d) 750.

1939. This statute is not unconstitutional on the ground of uncertainty and ambiguity. State ex rel. Charette v. District Court, 107 Mont. 489, 86 P. (2d) 750.

1939. This chapter, sections 1760.11 to 1760.16 inclusive, was not repealed by chapter 175 of the Laws of 1937, amending section 9111, Revised Codes of 1935. State ex rel. Charette v. District Court, 107 Mont. 489, 86 P. (2d) 750.

1760.12. Same — accidents — service of process on secretary of state. The acceptance by a non-resident of the rights and privileges conferred by the laws of this state to use the highways, roads and streets of the state and its political subdivisions as evidenced by his operating a motor vehicle thereon shall be deemed equivalent to and construed to be an appointment by such non-resident of the secretary of state of the state of Montana to be his true and lawful attorney upon whom may be served all lawful summons and processes against him growing out of any accident, collision, or liability in which said non-resident may be involved while operating a motor vehicle upon such highways, roads or streets, and said acceptance or operation shall be a signification of his agreement that any summons or process against him which is so served shall be of the same legal force and validity as if served on him personally within the state of Montana. [L. '37, Ch. 10, § 2. Approved and in effect February 10, 1937.

1913. This section is not unconstitutional on the ground of uncertainty and ambiguity. State ex rel. Charette v. District Court, 107 Mont. 489, 86 P. (2d) 750.

1760.13 Same — appointment of secretary of state for service of process — effect of service — exceptions. The operation by any person, by himself or his agent, of any motor vehicle, whether registered or unregistered, and with or without a license to operate, on any public way in this state, shall be deemed equivalent to an appointment by such person

of the secretary of state, or his successor in office, to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceeding against him, growing out of an accident or collision in which he or his agent may be involved while operating a motor vehicle on any public way in this state, and such operation shall be a signification of an agreement by such person that any such process against him which is served upon the secretary of state or his successor in office shall be of the same force and validity as if served upon him personally. This section shall not apply in case of any cause of action, for the service of process in which provision is made by section two, nor shall it authorize service of process upon any person who may with due diligence be found and personally served with process within the state of Montana. [L. '37, Ch. 10, § 3. Approved and in effect February 10, 1937.]

1760.14. Same — how service made — fee — notice by registered mail — personal service — mailing copy of process — continuance. Service of such summons or process under sections two and three shall be made by leaving a copy thereof with a fee of two dollars (\$2.00) with the secretary of state of the state of Montana, or in his office, and such service shall be sufficient and valid personal service upon the defendant.

Provided, that notice of such service and a copy of the summons or process is forthwith sent by registered mail requiring personal delivery, by the plaintiff to the defendant and the defendant's return receipt and plaintiff's affidavit of compliance herewith are appended to the process and entered as a part of the return thereof:

Provided, further, that personal service outside of this state in accordance with the provisions of the statutes thereof relating to a personal service of summons outside of this state shall relieve a plaintiff from mailing a copy of the summons or process by registered mail as hereinbefore provided. The secretary of state shall forthwith send one of such copies by mail, postage prepaid, addressed to the defendant at his address if known to the secretary of state. The court in which the action is brought may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action. [L. '37, Ch. 10, § 4. Approved and in effect February 10, 1937.]

1939. This section is not invalid because it permits the plaintiff, himself, to make service by mail on the defendant. In this case the service was made by the plaintiff's attorney, which the court held to be the act of the plaintiff. State ex rel. Charette v. District Court, 107 Mont. 489, 86 P. (2d) 750.

1939. This section is not invalid because it does not call for delivery of the complaint to the defendant, where the summons states where a copy of the complaint may be found; this constitutes due process. State ex rel. Charette v. District Court, 107 Mont. 489, 86 P. (2d) 750.

1939. This section is not unconstitutional on the ground of uncertainty and ambiguity. State ex rel. Charette v. District Court, 107 Mont. 489, 86 P. (2d) 750.

1939. Where the registry receipt shows that the letter containing a notice of service of summons on the secretary of state, as provided in this section, was offered to the defendant nonresident motorist and that he refused to accept delivery, he cannot complain that the receipt does not bear his signature, this being the result of his own wilful act. State ex rel. Charette v. District Court, 107 Mont. 489, 86 P. (2d) 750.

1760.15. Same — fee taxed against costs. The fee of two dollars (\$2.00) paid by the plaintiff to the secretary of state shall be taxed as part of his costs if he prevails in the action. [L. '37, Ch. 10, § 5. Approved and in effect February 10, 1937.]

1760.16. Same — record to be kept. The secretary of state shall keep a record of all such summons and process which shall show the day of service. [L. '37, Ch. 10, § 6. Approved and in effect February 10, 1937.]

1763.8a. New motor vehicles — towed or driven — certificate of mileage — labeling of vehicle — violation of act — penalty. Any firm, person, corporation or association of persons, or any employee of such or any of such, offering for sale or carrying on the business of selling new motor vehicles in the state of Montana, shall be required to prominently label any motor vehicle which has been driven under its own power, pushed or towed or propelled by any other means, to sufficiently identify it from other new vehicles that have not been so driven, pushed or towed; and shall be required to furnish the purchaser of any such motor vehicle with a certificate on a printed form to be furnished by the registrars of motor vehicles upon request by such dealers, showing the actual number of miles such motor vehicles has been driven under its own power and the number of miles such vehicle has been pushed, toward or otherwise propelled upon its own wheels; and any firm, person, corporation or association of persons, or employee of such or any of such who fails to so prominently label and issue such certificate, or who knowingly issues a certificate that is untrue and calculated to mislead the purchaser, shall be guilty of a misdemeanor. [L. '37, Ch. 26, § 1. Approved and in effect February 17, 1937.]

1763.8b. Demonstrating vehicles — application of act. The provisions of this act shall

not apply to motor vehicles during the period or time that such motor vehicles are used for bona fide demonstrating purposes. [L. '37, Ch. 26, § 2. Approved and in effect February 17, 1937.]

CHAPTER 155

FERRIES

1780. How land acquired for use of ferry.

1937. Cited in *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619, dissenting opinion.

CHAPTER 156

STATE HIGHWAY COMMISSION

Section

- 1797.1. Land not needed for highway — commissioner's power to sell — procedure — title — payment of purchase price.
- 1797.2. Same — sale — deed — execution — reservation.
- 1800.1. Municipal airports and connecting roads — commission to assist in construction — loan of machinery and services.
- 1800.2. Declaration of emergency.

1783. State highway commission — creation — salary — bond — term of office.

1937. The state highway act, § 1783 et seq., must be considered as a whole, and when so done, it is manifest that other provisions of the act of 1921 were automatically amended by the amendment of 1925, § 1783, so as to give the commission full power and authority to the exclusion of a "highway commissioner" as designated in the old act of 1921, so that all three of the commissioners stand now with equal powers and functions. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1937. Under the commission act, § 1783 et seq., as it now exists, the commission as a whole must function in all official matters in exactly the same manner that other commissions are required to function under similar laws, and notwithstanding the unimportant but obvious ambiguities mentioned. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1937. The state highway commission board can act officially only in a convened session with the members or a quorum thereof present. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1937. Under the highway commission act, § 1783 et seq., since each individual member of the commission was not an independent officer vested with separate powers, and the commission could only act as a body or board — or, at least, compensation was limited to such services — it was held on court review of removal of commissioners by the governor that per diem fees and expenses for individual services were not, as a necessary consequence, legally collectible under the law. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1937. The state highway commission is the creature of the legislature and has no powers except those granted to it by the legislature. *State ex rel. State Highway Commission v. District Court*, 105 Mont. 44, 69 P. (2d) 112.

1937. The legislature did not intend to create the highway commission as a state agency to carry out the state's highway construction plans and at the same time vest in any county, another state agency, the power to control and, in effect, veto constructive acts of the commission done in compliance with the mandate of the legislature. *State ex rel. State Highway Commission v. District Court*, 105 Mont. 44, 69 P. (2d) 112.

1937. Such a construction must be placed on § 1783 et seq. as will make it workable in conformity with the apparent legislative intent. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1784. Appointment of members — meetings — engineer, duties and bond.

1937. In quo warranto proceedings to determine whether highway commissioners were properly removed by the governor and others appointed in their stead, the supreme court decided that the action of the governor should be upheld, since he was, by law, made the sole arbiter of the controversy, that the decision was his, and that it was unnecessary for the court to weigh, consider, or appraise the testimony heard by him, though the court might have decided the matter differently from the way he decided it. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1937. In proceedings to remove highway commissioners the governor acts not only under the pertinent statute, but also under the constitution, and where acting in his executive capacity he cannot be controlled by the courts, except in case of arbitrary action. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1937. In proceedings by the governor to remove highway commissioners for collecting illegal fees and expenses for services, the governor could have taken the defenses of ignorance of the law and administrative practice as in mitigation of rules that these defenses offer no excuse in such cases, but in refusing to do so it could not be said that acted without right. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1937. In proceedings by the governor to remove highway commissioners for illegal charges and collections for services, the questions whether the policies pursued by the commissioners were sufficient to build up an administrative practice and thereby justify charging therefor, and whether the state received sufficient value to vindicate the commissioners in making the claims they did therefor, were questions for the governor. The statute made him judge and jury. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1937. In proceedings to remove highway commissioners by the governor for cause, while he was required to hear all defenses of the commissioners, with evidence, he was not required to believe them and to give full credit thereto to the extent that it was incumbent upon him to acquit them upon the charges. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1937. The governor's honest belief, after a fair consideration of all the facts and circumstances, that highway commissioners had wrongfully imposed upon the state and that money of the state had been diverted by them would constitute grounds to remove the offending commissioners so as to avoid such an occurrence in the future. *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619.

1937. Proceedings by the governor to remove state highway commissioners for misconduct in receiving

payment of illegal claims for per diem fees and expenses was held not a strictly judicial proceeding. State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P. (2d) 619.

1937. ✓ In a proceeding by the governor to remove highway commissioners the courts may not control or coerce the discretion of the governor, but he has no right to remove officials for reasons existing only within his own breast and without notice of hearing. State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P. (2d) 619.

1937. ✓ The governor, in proceedings to remove highway commissioners should not be required to disregard ordinary rules of fair procedure, and to hear and admit everything, however incompetent, irrelevant, or repetitious it might be. State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P. (2d) 619.

1937. ✓ Under this section the governor is empowered to proceed, in the exercise of his discretion, to remove members of the state highway commission in any reasonable manner not in conflict with the policy of the state and to fairly decide what is appropriate in the circumstances. State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P. (2d) 619.

1937. ✓ In proceedings by governor to remove highway commissioners it was held that the governor did not abuse his discretion in curtailing elaborate and detailed explanation of the good faith of the commissioners, their administrative practices, and value received by the state. State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P. (2d) 619.

1937. ✓ In conducting proceedings for the removal of highway commissioners for cause the governor is acting in the executive capacity, and not judicially, and courts cannot impose upon him any manner of strict procedure; and the legislature, by failing to do so, leaves him free to adopt any fair method of procedure he may deem proper. State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P. (2d) 619.

1937. ✓ In proceedings to remove highway commissioners for collecting illegal fees for per diem services and expenses, the governor held not to have acted without cause, or arbitrarily or capriciously. State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P. (2d) 619.

1937. ✓ In proceedings by the governor to remove state highway commissioners because of improper collection of illegal claims for per diem fees and expenses, the governor was held not estopped to make the removal because some of the claims were passed and allowed by the board of examiners while his predecessor in office, was a member of the latter board, nor was the fact that the board of examiners allowed the claims *res adjudicata* so as to prevent the governor from making such removal, nor did it estop him to do so, whatever effect such approval by the board might have on the right of the state to recover the money so illegally paid out of the state treasury. State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P. (2d) 619.

1937. ✓ Highway commissioners could not resist removal by the governor for collecting illegally per diem fees and expenses, on the ground that willfulness and corruption on their part had not been charged. State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P. (2d) 619.

1937. ✓ An order of the district court invading the powers of the governor to remove highway commissioners, to the extent of prohibiting either the continuance of the hearing to its final conclusion, or the hearing of charges on other grounds which might be presented by any citizen, or originating

with the governor, himself, exceeded the powers of the court. State ex rel. Holt v. District Court, 103 Mont. 438, 63 P. (2d) 1026.

1936. ✓ In a hearing for removal of a highway commissioner it was held that it was the duty of the governor to hear the evidence which might be offered in support of the defense of good faith. State ex rel. Holt v. District Court, 103 Mont. 438, 63 P. (2d) 1026.

1936. ✓ "For cause," as used in this section, means for reason which the law and sound public policy recognize as sufficient warrant for removal, that is "legal cause," and not merely a cause which the appointing power, in the exercise of discretion, may deem sufficient. State ex rel. Holt v. District Court, 103 Mont. 438, 63 P. (2d) 1026.

1936. ✓ Removal for cause must be only on notice and hearing. State ex rel. Holt v. District Court, 103 Mont. 438, 63 P. (2d) 1026.

1936. ✓ On hearing for the removal of a highway commissioner by the governor, evidence of his bias or prejudice was not admissible, since the proceeding was not judicial and there were no statutory provisions that bias or prejudice were a disqualification to act in such a case. State ex rel. Holt v. District Court, 103 Mont. 438, 63 P. (2d) 1026.

1936. ✓ The courts may only by their processes confine the governor, conducting proceedings to remove highway commissioners, within his proper sphere and compel him to hear and decide, but may not control his discretion. State ex rel. Holt v. District Court, 103 Mont. 438, 63 P. (2d) 1026.

1786. Compilation of statistics — investigation and consultation.

1937. Cited in State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P. (2d) 619, dissenting opinion.

1788. Commission to prescribe certain rules — designation of state highways.

1938. ✓ In action for the recovery of damages for the death of a crossing flagman, an instruction as to the right of the injured person to assume that others using the highway will obey the law, was held not exceptionable as conflicting and ambiguous, in view of the power of the state highway commissioner to make rules and regulations as to the use of the highways. Koppang v. Sevier, 106 Mont. 79, 75 P. (2d) 790.

1938. ✓ Under section 1788 the notification of user of a highway under construction was properly accomplished by giving the user a card at the beginning of the part under construction warning him of the condition of the road and the care required in traveling over it. Koppang v. Sevier, 106 Mont. 79, 75 P. (2d) 790.

1938. ✓ Where a user of the highway was given a card warning him of the condition of a piece of the road under construction and suggesting a speed of only 20 miles to avoid injury did not bind the user to that speed but required him to use ordinary care in view of the condition of the highway. Koppang v. Sevier, 106 Mont. 79, 75 P. (2d) 790, holding such card admissible in an action for the death of a flagman caused by such a user.

1938. ✓ The court's refusal to give an instruction as to the duty of a user of a highway under construction to obey the rules and regulations of the highway commissioner printed on a card given to a user before he entered the part under construction, held not reversible error, as the matter was covered by another given instruction. Koppang v. Sevier, 106 Mont. 79, 75 P. (2d) 790.

1937. ✓ Counties cannot prevent a particular county road being taken over by the state and converted into a state highway. State ex rel. State Highway Commission v. District Court, 105 Mont. 44, 69 P. (2d) 112.

1937. ✓ The state highway commission has authority to expend money for the construction of a road with federal aid though it has not been laid out as a state highway or designated as a state highway by the board of county commissioners of the county and no official road map of the state has been filed with the county clerk and recorder of the county showing the location of the section on which the money is to be used, as a part of a state highway. State ex rel. State Highway Commission v. District Court, 105 Mont. 44, 69 P. (2d) 112.

1937. ✓ Section 1788 says nothing about the highway commission cooperating with the county boards in laying out or building new state highways, but only cooperation for the improvement of public roads, and the reference in section 1612 to "public roads" obviously means roads then built and in use in the several counties. State ex rel. State Highway Commission v. District Court, 105 Mont. 44, 69 P. (2d) 112.

1937. ✓ Cited in State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P. (2d) 619, dissenting opinion.

1795. County commissioners may convey right of way.

1937. ✓ The provision of this section for conveyance of the right of way over an established county road to the state when the state designates a particular county road as a state highway does not recognize title in the county; but the provision is made for the purpose of having the county relinquish its control over the road selected, to the state, and to fix, as a matter of record, responsibility for its supervision and maintenance. State ex rel. State Highway Commission v. District Court, 105 Mont. 44, 69 P. (2d) 112.

1796. Preparation of official road map.

1937. ✓ The purpose of the provision in this section as to the filing of a map is to have the county records show what established roads or highways in a particular county are under the exclusive control and supervision of the commission; the section contains no mandatory provisions directing the commission to file the map before a contract for construction is let, and failure to do so does not vitiate a construction contract or furnish ground for an injunction against an award. State ex rel. State Highway Commission v. District Court, 105 Mont. 44, 69 P. (2d) 112.

1937. ✓ The state highway commission has authority to expend money for the construction of a road with federal aid, though it has not been laid out as a state highway or designated as a state highway by the board of county commissioners of the county and no official road map of the state has been filed with the county clerk and recorder of the county showing the location of the section on which the money is to be used, as a part of a state highway. State ex rel. State Highway Commission v. District Court, 105 Mont. 44, 69 P. (2d) 112.

1797.1. Land not needed for highway — commission's power to sell — procedure — title — payment of purchase price. The state highway commission of the state of Montana shall have the power to sell any interest in real estate, however acquired, belonging to the

state of Montana and purchased by highway funds, and which is not necessary to the laying out, altering, construction, improvement or maintenance of any state highway. If the property sought to be sold is reasonably of a value in excess of one hundred dollars (\$100.00), the sale shall be to the highest bidder at public auction or by sealed bids to the discretion of the highway commission, at the office of the state highway commission, highway building in the city of Helena, Montana, after previous notice given by publication in a newspaper published in the county in which said real estate is situated, notice to be published once a week for two successive weeks. The sale shall be for cash, lawful money of the United States. In all sales in property of a value in excess of one hundred dollars (\$100.00) there must, before any sale, be an appraisal thereof by the highway commission and at a price representing a fair market value of such property and such appraised value shall be stated in the notice of sale. No sale shall be made of any property unless it has been appraised within three months prior to the date of sale and no such sale shall be made for less than ninety percent of the appraised value. If no bid or offer is made for any property offered for sale after appraisal and notice given as provided herein, the highway commission may at any time thereafter sell such property at private sale and may on such private sale accept as the purchase price therefor an amount not less than ninety percent of the appraised value thereof. No title to any property sold under the provision thereof shall pass from the state of Montana until the purchaser shall have paid the full amount of the purchase price therefor into the state treasury to the credit of the state highway fund. [L. '39, Ch. 92, § 1. Approved and in effect March 1, 1939.]

1797.2. Same — sale — deed — execution — reservations. The governor, and in case of his absence or inability, the lieutenant governor, shall be, and is hereby authorized to execute deed or patent of conveyance transferring without covenants any and all lands sold by the state highway commission under the laws of this state when full payment has been made therefor. Such deed or patent shall contain the reservation of easements for rights of way to the United States, and all other reservations to which the particular land conveyed may be subject. Such deed or patent shall be attested by the secretary of state, and have the great seal of the state of Montana thereto attached, but need not be

acknowledged. [L. '39, Ch. 92, § 2. Approved and in effect March 1, 1939.

Section 3 repeals conflicting laws.

1800.1. Municipal airports and connecting roads—commission to assist in construction—loan of machinery and services. The Montana state highway commission is hereby authorized and upon written application of the governing body of any municipal corporation in Montana, to assist such corporations in the location, establishment, construction, reconstruction, maintenance and improvement of highways and roads to and from municipal airports and field development thereof; and the commission shall lend its equipment, machinery, technical services and supervision to the same, under agreements made with each municipal corporation. [L. '39, Ch. 120, § 1. Approved and in effect March 3, 1939.

1800.2. Declaration of emergency. The legislative assembly of the state of Montana hereby recognizes the existence of the emergency requiring the enactment of this legislation in that the existing economic depression prevailing throughout the United States has greatly retarded the proper development of airports in the state of Montana, and their ready connections with city centers and main highways; and the pressing necessity of speeding the development of all airports in furtherance and co-ordination of national defense, and declares the same. [L. '39, Ch. 120, § 2. Approved and in effect March 3, 1939.

Section 3 repeals conflicting laws.

CHAPTER 159

SELECTION, CLASSIFICATION, APPRAISAL, AND EXCHANGE OF LANDS

Section

1805.19a. Exchange of lands by state board of land commissioners with state water conservation board—when beneficial to project under chapter 135.

1805.19a. Exchange of lands by state board of land commissioners with state water conservation board—when beneficial to project under chapter 135. The state board of land commissioners of the state of Montana is hereby authorized to accept on behalf of the state of Montana title in fee simple to any land in the state of Montana owned by or title to which may be hereafter acquired by the state water conservation board of the state of Montana, and to convey in exchange therefor state owned land of approximately the same area and of a value not higher than the land received from the state water con-

servation board whenever such exchange will be beneficial or essential to the construction, maintenance or operation of any project now under construction or which may hereafter be approved by said state water conservation board for construction under the provisions of chapter 135 of the revised codes of Montana of 1935, and whenever such exchange will also be advantageous to the land grant from which land is to be exchanged with the state water conservation board. [L. '37, Ch. 168, § 1, amending R. C. M. 1935, § 1805.19a. Approved and in effect March 18, 1937.

Section 2 repeals conflicting laws.

CHAPTER 160

LEASING OF AGRICULTURAL LANDS, GRAZING LANDS, AND TOWN, CITY, AND OTHER LOTS

Section

1805.21. Renewal of leases.

1805.23. Who may lease—how much—for what length of time—when rentals subject to increase.

1805.24. Lease expiration dates.

1805.32. Leases may be assigned—preference—subleasing—actual users to be given preference—conditions—terms—filing and approval.

1805.20. Leasing of agricultural and grazing lands and town and city lots.

1935. Laws of 1933, chapter 42, and Laws of 1935, chapter 61, concerning the leasing of state lands for grazing purposes, being in pari materia, are to be construed together. Rathbone v. State Board of Land Commissioners, 100 Mont. 109, 47 P. (2d) 47.

1935. Laws of 1933, chapter 42, and laws of 1935, chapter 61, which provided for extensions of leases of state lands for grazing purposes, did not violate either constitution, Art 5, § 26, or Art. 17, § 1. Leuthold v. Brandjord, 100 Mont. 96, 47 P. (2d) 41.

1935. Laws of 1935, chapter 61, §§ 1, 2, concerning the extensions of leases of state lands for grazing purposes, was not, because of provision giving lessee an option, a delegation of legislative powers, in violation of constitution, article 5, § 1. Leuthold v. Brandjord, 100 Mont. 96, 47 P. (2d) 41.

1935. Laws of 1935, chapter 61, §§ 1, 2, providing for extensions of leases of state lands, did not violate Const. Art. 11, § 4, vesting control over state lands in state land board. Leuthold v. Brandjord, 100 Mont. 96, 47 P. (2d) 41.

1935. The prohibition against leasing state lands at less than the full market value means, that the state land board shall secure the full market value of the lease at the time such lease is issued. Rathbone v. State Board of Land Commissioners, 100 Mont. 109, 47 P. (2d) 47.

1935. Laws of 1935, chapter 61, concerning extensions of leases of state lands for grazing purposes, in connection with Laws of 1933, chapter 42, construed and held not violative of the constitution, Art. 17, § 1. Rathbone v. State Board of Land Commissioners, 100 Mont. 109, 47 P. (2d) 47.

1935. Under the Laws of 1933, chapter 42, concerning the power of the state land board to renew expiring leases of state lands for agricultural or grazing purposes, and constitution article 17, § 1, the board, in discharge of its trust, should secure the largest legitimate advantage to the beneficiary, and it has no power or authority to renew an expiring lease at the noncompetitive leasing price when there is another applicant willing and able to pay a higher rental, for the statutory rate is recognized as the full market value which has been ascertained in the manner provided by the constitution only when there is no competition. *Rathbone v. State Board of Land Commissioners*, 100 Mont. 109, 47 P. (2d) 47.

1935. Laws of 1933, chapter 42, and Laws of 1935, chapter 61, concerning the extension of leases of state lands for grazing purposes, held not to violate Const. Art. 15, § 13, or the fourteenth amendment of the constitution of the United States. *Leuthold v. Brandjord*, 100 Mont. 96, 47 P. (2d) 41.

1805.21. Renewal of leases. A lessee who has paid all rentals due from him to the state and not violated the terms of his lease may be entitled to have his lease renewed at any time within thirty (30) days prior to its expiration for an additional period of not exceeding ten (10) years. [L. '39, Ch. 65, § 1, amending R. C. M. 1935, § 1805.21. Approved and in effect February 27, 1939.]

Section 4 repeals conflicting laws.

1805.23. Who may lease—how much—for what length of time—when rentals subject to increase. No person shall be qualified to lease state lands except one who is the head of a family unless he or she has attained the age of twenty-one (21) years. Any such person and any association, company or corporation authorized to hold lands under lease may lease state lands, and there may be included under one lease, tracts of lands embracing more than one (1) section, whether the lands have been received by the state through federal land grants or consist of so-called "mortgage lands"; any such person, association, company or corporation may hold more than one (1) lease to such lands. No lease to agricultural or grazing lands, or town or city lots shall be for a longer period of time than ten (10) years. If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land hereafter issued which are not issued as a result of competitive bidding the lessee shall, for the years after such increase becomes effective, pay such increased rental and the terms of grazing leases hereafter issued shall so provide. [L. '39, Ch. 65, § 2, amending R. C. M. 1935, § 1805.23. Approved and in effect February 27, 1939.]

Section 4 repeals conflicting laws.

1805.24. Lease expiration dates. All leases for agricultural lands, grazing lands and town and city lots hereafter issued no matter on

what date issued, shall expire on February 28 within ten (10) years from the date on which the lease becomes effective. [L. '39, Ch. 65, § 3, amending R. C. M. 1935, § 1805.24. Approved and in effect February 27, 1939.]

Section 4 repeals conflicting laws.

1805.32. Leases may be assigned—preference—sub-leasing—actual users to be given preference—conditions—terms—filing and approval. Leases to state lands may be assigned on blanks provided for that purpose by the commissioner, but no such assignment shall be binding on the state unless the assignment is filed with the commissioner, approved by him and payment made of the assignment fee of one dollar (\$1.00). Preference shall always be given to the applicant who wants the land for his own individual use so that the full advantage coming from the leasing and use of such lands may reach those who actually till the soil, and so that they shall not be compelled to pay a higher rental than that due the state. If a lessee sub-leases state lands on terms less advantageous to the sub-lessee than the terms given by the state, his lease shall be subject to cancellation by the state board of land commissioners after hearing, duly held on the facts involved. In any case where state land is sub-leased by any lessee of state lands, such sub-lease shall be illegal unless a copy of the sub-lease has been filed with the state land office and approved by the commissioner of state lands and investments. [L. '37, Ch. 14, § 1, amending R. C. M. 1935, § 1805.32. Approved and in effect February 10, 1937.]

Section 2 repeals conflicting laws.

CHAPTER 162

PROSPECTING PERMITS AND MINING LEASES

Section

1805.48-1805.51. Repealed

1805.51-1. State lands—prospecting permits—mining leases—definitions.

1805.51-2. Empowering state board of land commissioners to lease, etc.—duration of leases.

1805.51-3. Provisions of leases, etc.—discretion of board—removal of minerals during prospect period—extension of term.

1805.51-4. Royalties.

1805.51-5. Quantity of lands.

1805.51-6. Form of applications—fees.

1805.51-7. Bonds to state.

1805.51-8. Bonds to protect lessees, contractees, etc.—prior purchaser—suit upon bond.

1805.51-9. Sales, etc., subject to mining leases.

1805.51-10. Coal, oil and gas not affected—when.

1805.51-11. Examination of lands—duty of board—lease—applicant—deposit.

1805.51-12. Failure of title.

Section

- 1805.51-13. Assignment of leases or permits—approval—requirements—sureties' consent—fee.
- 1805.51-14. Determining title to stream beds, etc.
- 1805.51-15. Prospecting permits—outstanding permits and leases—continuation in force—permit fee—limitation—lease to permittee—preference right—lease to better bidder.
- 1805.51-16. Notice to lessees.
- 1805.51-17. Disposition of royalties, fees, and penalties—mortgage lands—lands not acquired from United States.
- 1805.51-18. Repealed.

1805.48-1805.51. Repealed. [L. '37, Ch. 148, § 18 (1805.51-18, post).]

1805.51-1. State lands—prospecting permits—mining leases—definitions. a. The term “metalliferous minerals”, as used in this act, means gold, silver, lead, zinc, copper, platinum, iron and all other metallic minerals.

b. The term “gems”, as used in this act, means sapphires, rubies and other stones commonly known as “precious stones” or “semi-precious stones”, but does not include any stone or other earth material commonly used in building or construction work.

c. The term “mining”, as used in this act, means the carrying on of operations of any kind for the purpose of extracting from the earth ore and other earth material containing metalliferous minerals and/or gems, and includes operations of any kind for the extraction from ores and other earth material of metalliferous minerals and/or gems.

d. The term “mining lease”, as used in this act, means a lease issued by the state board of land commissioners for the prospecting for and/or mining of metalliferous minerals and/or gems. The term “mining lessee”, as used in this act, means the holder of a mining lease as herein defined, whether such holder is the original lessee under such lease, or holds such lease as successor of such original lessee.

e. The term “returns”, as used in this act, means the net amount received by the shipper from products of mining operations, after deducting transportation costs and smelting charges and deductions, and other treatment costs, not including as a deduction any cost of producing or treating at the mine.

f. The term “full market value”, as used in this act, means the highest net value of products of mining operations in United States markets, less cost of transportation and refining, not including as a deduction any cost of producing or treating at the mine. [L. '37, Ch. 148, § 1. Approved and in effect March 16, 1937.]

1805.51-2. Empowering state board of land commissioners to lease, etc.—duration of leases. The state board of land commissioners is hereby empowered, in its discretion, subject to the other provisions of this act, to lease state owned lands, including the beds of navigable streams and the beds of navigable bodies of water, and the reserved mineral rights of the state in lands heretofore or hereafter sold or leased by the state, to persons, associations of persons, or corporations, for the purpose of prospecting for and/or mining metalliferous minerals and/or gems. Such leases may be for such periods of time as may be determined by said board, subject to such limitations as may be contained in the grants by which the state has heretofore acquired or may hereafter acquire title to lands or mineral rights so leased. [L. '37, Ch. 148, § 2. Approved and in effect March 16, 1937.]

1805.51-3. Provisions of leases, etc.—discretion of board—removal of minerals during prospect period—extension of term. Leases issued by said board under the authority of this act shall give the lessee, so long as he shall comply with the terms and conditions thereof, the exclusive right of possession of the lands or mineral rights leased thereby, subject to such reservations as may be contained in such leases, and may contain reasonable provisions for preliminary prospecting periods, and shall contain reasonable requirements for the prosecution of work during the prospecting period (if any), and for the prosecution of the work of mining after the prospecting period, and may provide for the payment of rentals in conjunction with such work requirements, or may prescribe cash rentals as an alternative, or otherwise, as the board may deem best, shall specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions and reasonable terms under which the lessee may, within a time limited in such lease, remove property placed upon the leased lands by him, in the event of the termination of the lease by forfeiture or by lapse of time, and may contain such other provisions as said board and the lessee may agree upon, not inconsistent with the provisions of this act, and in short said board shall have the power in making such leases to exercise business discretion, so long as the provisions of this act shall not be violated. No mining lessee shall, during any preliminary prospecting period contained in any such lease, remove any metalliferous minerals or gems from the leased premises, except such as may be necessary for the proper testing and sampling of such lands or mineral rights, and except as may be permitted by said board. The board

may, in its discretion and upon such terms as it may deem best, extend from time to time the term of any lease or prospecting permit issued under the provisions of this act, subject to the limitations contained in section 2 of this act [1805.51-2]. [L. '37, Ch. 148, § 3. Approved and in effect March 15, 1937.]

1805.51-4. Royalties. In every such lease the board shall reserve to the state of Montana a royalty which shall, together with the other considerations to be paid by the mining lessee, constitute the full market value of the leasehold interest conveyed by such lease, as such full market value shall be ascertained by the board in accordance with the provisions of this act; which royalty shall be not less than five per cent (5%) of the returns from, or of the full market value of, the metalliferous minerals and/or gems recovered by the lessee from the state lands or reserved mineral rights covered by such lease. [L. '37, Ch. 148, § 4. Approved and in effect March 16, 1937.]

1805.51-5. Quantity of lands. Any such lease shall cover such quantity of ground as the board, shall, in its judgment, determine to be reasonable and consistent with the character of the ground, the type of deposit or deposits for which said lands is to be mined, and the character and size of the operation contemplated or necessary or reasonable in good mining practice, for the profitable recovery of such metalliferous minerals and/or gems therefrom. [L. '37, Ch. 148, § 5. Approved and in effect March 16, 1937.]

1805.51-6. Form of applications — fees. Forms of applications for leases under the provisions of this act shall be prepared by the state board of land commissioners, and each applicant for a mining lease shall execute an application in such form. At the time of the issuance of any mining lease, the mining lessee shall pay to the board a fee of not more than one hundred dollars (\$100.00), the amount thereof to be fixed by said board and to be based upon the office work of said board involved in the preparation and issuance of such lease, but the decision of the board as to the amount thereof within said limit shall be final. [L. '37, Ch. 148, § 6. Approved and in effect March 16, 1937.]

1805.51-7. Bonds to state. The board may also at the time of the execution and delivery of any such mining lease, or at any time during the life thereof, require any mining lessee to file with said board, for the benefit of the state of Montana, a bond or bonds conditioned to protect the rights of the state of Montana, particularly in the payment to the proper officer of said state of the royalties reserved

in such mining lease, such bond or bonds to be in such form as may be prescribed by said board, and the sufficiency thereof to be subject to the approval of the board. The board may at any time require new or additional bonds if, in its discretion, the interests of the state are not adequately protected by the bond or bonds theretofore filed with it in connection with any such mining lease. [L. '37, Ch. 148, § 7. Approved and in effect March 16, 1937.]

1805.51-8. Bonds to protect lessees, contractees, etc.—prior purchaser—suit upon bond. In the case of lands which shall, at the time of the issuance of a mining lease have been sold, or be under contract of sale, or leased for agricultural, grazing, or other purposes, the board shall provide against the infringement of the rights of such prior purchaser, contractee, or lessee, and among other things may at any time require the mining lessee to file with said board a corporate surety bond in such reasonable amount as may be fixed by the board, conditioned to protect the rights of such prior purchaser, contractee or lessee, the form of such bond to be prescribed by said board, which bond shall run to the state of Montana for the benefit of such prior purchaser, contractee, or lessee, for whose benefit the same is filed with said board. New or additional bonds may be required by the board at any time. Suit may be brought upon such bond by any such prior purchaser, contractee or lessee, for alleged violation of the terms thereof by such mining lessee, and any such suit shall be brought by such claimant in the name of the state of Montana for the use and benefit of such claimant, and any recovery upon such bond shall be for the benefit of and shall be paid to the claimant in whose suit such recovery is made. [L. '37, Ch. 148, § 8. Approved and in effect March 16, 1937.]

1805.51-9. Sales, etc., subject to mining leases. Any sale of state lands, any contract for the sale of state lands and any lease of state lands, made or issued by said board during the life of any mining lease issued under the provisions of this act shall be subject to such mining lease during the life thereof, and no bond shall be required of such mining lessee for the protection of any such purchaser, contractee or other lessee, unless provision therefor shall be made in such mining lease. [L. '37, Ch. 148, § 9. Approved and in effect March 16, 1937.]

1805.51-10. Coal, oil and gas not affected—when. In the case of lands covered by a lease for the mining of coal, oil or gas, no lease for the mining upon any such land for metalliferous minerals and/or gems shall be issued

to any person, association of persons, or corporation, other than the holder of such coal, oil or gas lease while such coal, oil or gas lease is in force, except with the written consent of the holder of such coal, oil or gas lease. [L. '37, Ch. 148, § 10. Approved and in effect March 16, 1937.]

1805.51-11. Examination of lands — duty of board — lease — applicant — deposit. Before leasing any lands for the mining of metalliferous metals and/or gems, the board shall investigate the character of such lands and the nature and possible extent of the mineral deposits therein, for the purpose of determining whether such lands are of such a character as to warrant the issuance of a mining lease thereon, and for the purpose of determining the amount of royalty and other rentals or considerations for which such lands should be leased for mining purposes under the provisions of this act. Upon the filing of an application for a mining lease the board may, if the lands covered by such application shall not have theretofore been examined by the board as above provided, require the applicant for such mining lease to deposit with the board an amount of money, not exceeding five hundred dollars (\$500.00) in any one case, which, in its judgment, will cover the cost of a special examination, to enable the board to pass upon such application in accordance with the provisions of this act. Such deposit shall be used to reimburse the state of Montana for the actual cost of such examination, and any portion of such deposit not required for such reimbursement shall, upon the approval or rejection of such application, be by the board repaid to the applicant depositing the same. The board shall make and preserve complete records of all such examinations. [L. '37, Ch. 148, § 11. Approved and in effect March 16, 1937.]

1805.51-12. Failure of title. In issuing mining leases, as in this act authorized, the said board and the state of Montana shall be deemed to have leased only such right, title and interest as the state may have in the lands and/or metalliferous minerals and/or gems therein contained, covered by such lease, and neither the state of Montana, nor said board, nor any representative, agent or employee of the state of Montana, or of said board shall be under any liability in the event of the failure of the title of the state of Montana, in whole or in part, to the lands and/or metalliferous minerals, and/or gems covered by such lease. [L. '37, Ch. 148, § 12. Approved and in effect March 16, 1937.]

1805.51-13. Assignment of leases or permits — approval — requirements — sureties' con-

sent — fee. In case of the assignment of a mining lease or a prospecting permit by the holder thereof, the mining lessee or permittee executing such assignment shall not be relieved of any responsibility for operations under such lease or prospecting permit until the financial and moral responsibility of the assignee shall have been passed upon and approved by the board, nor until there shall be deposited with the board:

(a) Such assignment or an executed copy thereof;

(b) An instrument executed by the sureties upon any and all bonds then held by said board in connection with such mining lease or permit and then in force, consenting to such assignment and containing the agreement of such sureties to be bound by such bonds under such assignment, or new bonds conforming to all the requirements of section 7 hereof [1805.51-7]; and

(c) A fee of two and 50/100 dollars (\$2.50). [L. '37, Ch. 148, § 13. Approved and in effect March 16, 1937.]

1805.51-14. Determining title to stream beds, etc. The state board of land commissioners is hereby empowered to take all proper proceedings for the purpose of determining the title to the beds of lakes and other bodies of water and of streams within the state of Montana, and to that end to bring or defend suits or other proceedings in court, or before other proper tribunals. [L. '37, Ch. 148, § 14. Approved and in effect March 16, 1937.]

1805.51-15. Prospecting permits — outstanding permits and leases—continuation in force — permit fee — limitation — lease to permittee — preference right — lease to better bidder. All prospecting permits and all leases outstanding and in good standing at the time of the passage of this act may continue in force until their expiration by their terms, and the rights of the respective permittees or lessees shall be governed by the laws in force when such permits were respectively issued. Prospecting permits without lease may be hereafter issued by the board upon the payment of a fee of one dollar (\$1.00) at the time of the issuance of such permit and a like fee of one dollar (\$1.00) at the end of each year during the life thereof, and any such permit shall provide for due diligence in the work of prospecting during the life of such permit. Any such permit shall be limited to prospecting for metalliferous minerals and/or gems and no such permittee shall have the right to remove from any lands or mineral rights covered by such permit any metalliferous minerals or gems except such as may be

necessary for the proper testing and sampling of such lands or mineral rights, and except as may be permitted by said board. During the life of any permit in force at the time of the passage of this act, or issued under the provisions of this section, the permittee may apply for a lease of the lands or mineral rights covered by such permit, and if a lease is granted the same shall be in the form and subject to all the terms and conditions specified in this act, as in the case of a mining lease issued under this act. Such permittee shall have the preference right to a lease, upon such terms as the board shall deem just, subject to the terms of this act, and in any event said permittee shall have preference without competitive bidding, and upon the most favorable terms permitted under this act, to forty (40) contiguous acres. If some other person shall make a better bid for a mining lease upon the land covered by such permit, and if the board shall award a mining lease to such better bidder, the board shall also require such mining lessee to pay to the permittee, prior to the issuance of such lease, the full value of all the work the permittee shall have performed upon the land under his permit in connection with his prospecting and exploration work, and the permittee shall have the right to remove from such land, within thirty (30) days from the date the board shall give such permittee notice of the issuance of such mining lease, or within such further time as the board, upon good cause shown, may allow, any machinery, equipment, improvements, and other property placed thereon by him. [L. '37, Ch. 148, § 15. Approved and in effect March 16, 1937.]

1805.51-16. Notice to lessees. Upon the granting of an application for a prospecting permit or a mining lease under the provisions of this act, the commissioner of state lands and investments shall promptly give written notice, by ordinary mail, to the person, association of persons, or corporation to whom such permit or lease shall be so issued, and to the holder of an agricultural or grazing lease embracing the same land, if there be such lessee, or to the holder of a certificate of purchase or patent embracing the same land, if there be such purchaser or patentee. The said notice shall be addressed to such permittee, mining lessee, agricultural or grazing lessee, purchaser or patentee at his last known postoffice address. [L. '37, Ch. 148, § 16. Approved and in effect March 16, 1937.]

1805.51-17. Disposition of royalties, fees, and penalties—mortgage lands—lands not acquired from United States. All fees and penalties collected under this act shall be credited to the state general fund; all rentals

shall be credited to the income fund of the grant to which the land belongs; and all moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land belongs under each particular permit or lease; provided, however, that all rentals and royalties received from "mortgage lands" shall be credited to the same fund or funds as other receipts from such lands; and that all rentals and royalties received under or in connection with a lease or permit on other lands or minerals rights, not acquired through any grant to the state of Montana from the United States, shall be paid into the same funds into which such receipts are paid when the land is part of the grant for the benefit of the public schools of the state of Montana. [L. '37, Ch. 148, § 17. Approved and in effect March 16, 1937.]

1805.51-18. Repealed. Sections 1805.48, 1805.49, 1805.50 and 1805.51 of the revised codes of Montana of 1935, are hereby repealed, except that all permits and leases issued under said sections and in good standing at the time of the passage and approval of this act shall continue in force until they shall expire by their terms, and said sections shall continue in force only to the extent necessary to protect the rights of the permittees and lessees under such permits and leases.

All other acts or parts of acts in conflict with this act are hereby repealed. [L. '37, Ch. 148, § 18. Approved and in effect March 16, 1937.]

CHAPTER 164

GRANTING OF EASEMENTS FOR PUBLIC PURPOSES

Section

1805.58 to 1805.60. Repealed.

1805.61. Easements on state land—application—contents—to whom made—official plat—copies—filing—viewing proposed easement—board's report—compensation and damages—how ascertained—deeds—land under certificate of purchase contract—parties—compensation and damages—determination.

1805.62. Easements on state land—purposes for which easement may be granted—termination—compensation and damages—determination and collection—benefits.

1805.63. Lessees of land—notice—damages—removal of fences—proof of settlement.

1805.63-1. Repealed.

1805.58 to 1805.60. Repealed. [L. '39, Ch. 108, § 4. Approved and in effect March 3, 1939. See § 1805.63-1.]

1805.61. Easements on state land — application — contents — to whom made — official plat — copies — filing — viewing proposed easement — board's report — compensation and damages — how ascertained — deeds — land under certificate of purchase contract — parties — compensation and damages — determination. Application for easement on state land must be made to the state board of land commissioners and shall describe the proposed right of way according to survey, show the necessity for the proposed highway or street or other easement and give such additional information as the board may require. This application shall be accompanied by two exact copies of the official plat of the proposed highway, street or other easement duly verified by the affidavit of the county surveyor or county or city engineer, or other engineer having prepared the same, endorsed thereon. These plats shall show the quantity of land taken by the proposed highway or street or other easement for each forty-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of such forty-acre tract or government lot. When deemed necessary by the board, the aforesaid plats shall show all these facts for such smaller subdivisions as the circumstances may render desirable for the state.

Upon the filing of such application and plats, the commissioner of state lands and investments shall whenever he deems it necessary cause the proposed right of way to be viewed and examined by the chief field agent or some assistant field agent who shall report his findings to the board. The board shall thereupon consider the application and report and take such action as it deems proper, including the fixing of compensation and damages to be paid to the state. The compensation so fixed shall be the full market value of the estate or interest disposed of through the granting of such right of way easement, and the damages shall be the actual damages resulting to the remaining land as nearly as the same can be ascertained. If the right of way is granted according to the plat, then such plat shall become the official plat thereof, and shall be retained in the office of the commissioner. The board shall cause right of way deeds to be issued for all such easements that it may hereafter grant upon full payment therefor being made.

If the state land over or through which such right of way is applied for, is under certificate of purchase or under sales contract, the purchaser, or his assignee, must be made a party to the proceedings, and his consent in writing to the laying out and establishment of the proposed highway and to the amount of com-

pensation and damages to be paid must be filed with the board before such right of way shall be granted. The board shall be the judge of how much of such compensation and damages shall be paid to the state and applied on the certificate of purchase or sales contract and of how much thereof, if any, shall be paid to the purchaser, as the circumstances in each individual case may warrant. The provisions of this paragraph shall apply to all grants of rights of way on state lands. [L. '39 Ch. 108, § 1, amending R. C. M. 1935, § 1805.61. Approved and in effect March 3, 1939.

1805.62. Easements on state land — purposes for which easement may be granted — termination — compensation and damages — determination and collection — benefits. The state board of land commissioners may grant an easement for right of way across or upon any portion of state lands for any public highway, street or for any ditch, reservoir, railroad, private road, telegraph or telephone line, or for any other public use, as defined in the code of civil procedure; provided, that this section shall not be construed to grant authority to convey any such land, except for the purposes above set forth; and provided further, that whenever lands granted for any of the purposes mentioned in this section shall cease to be used for such purposes, said easement shall forthwith terminate upon notice to that effect to the person to whom such grant was made, served at his last known post office address. The board shall charge and cause to be collected the full market value of the estate or interest disposed of through the granting of any such easement and also fix, charge and cause to be collected the amount of the actual damages resulting to the remaining land or lands from the granting of such easement as nearly as the same can be ascertained, providing, however, that where a road follows the section lines of state lands, the increased value accruing to said lands, on account of construction of a road on said right of way easement, shall be taken into consideration by the state board of land commissioners in determining compensation, if any, for the easement. [L. '39, Ch. 108, § 2, amending R. C. M. 1935, § 1805.62. Approved and in effect March 3, 1939.

1805.63. Lessees of land — notice — damages — removal of fences — proof of settlement. Whenever any kind of right of way easement has been granted under this act and the state land in which it is granted is under lease, the party receiving such grant shall give due and timely notice to the lessee and shall make just settlement with him for any damages resulting to his improvements or

crops or leasehold interests. Upon such settlement being made, the lessee shall open or move any fences that may obstruct the right of way over the lands under his lease and otherwise cooperate in the opening of the right of way. Proof shall be filed with the board that such settlement has been made before the deed to the easement is issued. [L. '39, Ch. 108, § 3, amending R. C. M. 1935, § 1805.63. Approved and in effect March 3, 1939.

1805.63-1. Repealed. That sections 1805.58, 1805.59 and 1805.60 of the revised codes of Montana, 1935, together with all acts and parts of acts in conflict herewith, be, and the same are hereby repealed. [L. '39, Ch. 108, § 4. Approved and in effect March 3, 1939.

CHAPTER 165

SALE OF STATE LANDS

Section

- 1805.65-1. Glacier national park—conveyance of minerals to United States.
- 1805.79. Terms of payment—interest on balance.
- 1805.87a. Delinquent installments—payment without penalty.
- 1805.87b. Cancelled certificates—reinstatement.
- 1805.87c. Delinquent certificates—notice to holders of their rights.
- 1805.87d. Partial invalidity saving clause—emergency declaration.
- 1805.87e. Stay of conflicting laws until December, 1940.
- 1805.88. Default in payment of purchase price—cancellation of certificate—improvements—removal—time.
- 1805.88a. Same—notice to owner of his rights.
- 1805.88b. Land purchaser in default—purchase certificate converted into amortization contract.
- 1805.88c. Same—same—terms and conditions of contract—discretion of board of land commissioners.
- 1805.88d. Construction of act.
- 1805.88e. Partial invalidity saving clause.
- 1805.88f. Effective date and duration of act.
- 1805.89a. Land purchaser in default—canceled certificate—reinstatement—requirements—conversion into amortization contract.

1805.65-1. Glacier national park—conveyance of minerals to United States. For the purpose of cooperating with the United States of America in Glacier national park in the state of Montana, the governor, secretary of state and commissioner of state lands and investments are hereby authorized and directed, under the formalities specified in section 1805.96 of the revised codes of Montana, 1935, relating to execution of patents to state lands, to release, relinquish and convey to the United States of America, without cost, all of the right, title and interest of the state of Montana in and to the minerals

now known or hereafter found to exist in the following described property lying within the exterior boundaries of Glacier national park, state of Montana, to-wit: the northeast quarter (NE $\frac{1}{4}$) of section thirty-six (36), township thirty-four (34) north, range twenty (20) west, Montana principal meridian. [L. '39, Ch. 1, § 1. Approved and in effect January 30, 1939.

1805.79. Terms of payment—interest on balance. Every bidder upon state land of any class whatsoever shall accompany his bid with a certified check for not less than ten per centum (10%) of the total appraised sales price as advertised. Every purchaser of state land shall pay in cash on the day of sale such portion of the purchase price as he may desire but in no case less than ten per centum (10%) of the total sales price, and in case the balance on the purchase price is not an exact multiple of twenty-five dollars (\$25.00), then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of twenty-five dollars (\$25.00); he shall also in all cases pay the sum of five dollars (\$5.00) as a fee for each certificate of purchase to be issued to him.

The balance of the purchase price shall draw interest at the rate of five per centum (5%) per annum, payable annually, and the balance of the purchase price itself shall be payable through a period of thirty-three (33) years on the amortization plan, which is hereby defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable, and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full; provided, however, that the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments; provided, however, that the balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of twenty (20) years; and provided further that the board may at any time fix a shorter period than twenty (20) years for the payment of such balance on town and city lots, and different periods of time may be established for different towns and cities as the best interest of the state may appear to demand. [L. '39, Ch. 149, § 1, amending R. C. M. 1935, § 1805.79. Approved and in effect March 11, 1939.

Section 2 repeals conflicting laws.

1805.87a. Delinquent installments — payment without penalty. From and after the passage and approval of this act, any holder of a certificate of purchase of state lands under which any installments are delinquent shall be permitted to pay such delinquent installment or installments without the payment of any penalty interest thereon. Such payment must be made on or before the first day of December, 1940, and if not made on or before said date, then payment thereof can be made only by payment of such installment or installments with accrued penalty interest as now provided by law. [L. '39, Ch. 140, § 1. Approved and in effect March 11, 1939.]

1805.87b. Canceled certificates — reinstatement. The provisions of section 1 [1803.87a] hereof shall apply to payments of delinquent installments by persons applying under the provisions of section 1805.89, revised codes of Montana, 1935, for reinstatement of a canceled certificate of purchase, and application for such reinstatement of any canceled certificate may be made within six (6) years of such cancellation, if made during the period of operation of this act as set forth in section 1 [1805.87a] hereof. [L. '39, Ch. 140, § 2. Approved and in effect March 11, 1939.]

1805.87c. Delinquent certificates — notice to holders of their rights. It shall be the duty of the commissioner of state lands to mail notice to holders of certificates of purchase of state lands upon which any installment or installments are delinquent and to any persons who held certificates of purchase of state lands which are canceled, if the lands embraced therein have not been resold, to their last known address, advising them of their rights and the amount of delinquent installments, under the provisions of this act, within sixty (60) days from and after its passage and approval. [L. '39, Ch. 140, § 3. Approved and in effect March 11, 1939.]

1805.87d. Partial invalidity saving clause—emergency declaration. If any section, sub-section, sentence, clause or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly declares that it would have passed this act and each section, sub-section, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, sub-sections, sentence, clause or phrase be declared unconstitutional, the same being necessary to the welfare of the state of Montana and the political subdivisions thereof by reason of the existence of an extraordinary emergency. [L. '39, Ch. 140, § 4. Approved and in effect March 11, 1939.]

1805.87e. Stay of conflicting laws until December, 1940. This act stays the operation of all acts and parts of acts in conflict herewith until the first day of December, 1940, but does not otherwise affect such acts or parts of acts. [L. '39, Ch. 140, § 6. Approved and in effect March 11, 1939.]

1805.88. Default in payment of purchase price — cancellation of certificate — improvements — removal — time. Whenever any purchaser of state land hereafter sold, or the assignee, shall default for a period of thirty (30) days or more in the payment of any of the installments due on his certificate of purchase, the certificate shall be subject to cancellation and the board shall cause to be mailed to him at his last known postoffice address a notice of default and pending cancellation which notice shall give him sixty (60) additional days from the date of mailing such notice in which to make payment of the delinquent installment or installments with penalty interest. If he fails to make such payment within that period the certificate of purchase shall from that date and without further notice be null and void, the duplicate of the certificate in the office of the commissioner shall be canceled and the land under the certificate shall revert to the state and such land shall become the property of the state to the same extent as other state lands and shall be open to lease and sale, provided that all buildings, fences and other improvements placed thereon subsequent to the date of execution of such certificate of purchase shall be and remain the property of the purchaser named in said certificate of purchase or of his heirs, assigns, or devisees; and may be removed from such land at any time within ninety (90) days from and after the date of such cancellation. If such buildings, fences, and other improvements shall not have been removed prior to the expiration of such ninety (90) day period, they shall become the property of the state. [L. '39, Ch. 141, § 4, amending R. C. M. 1935, § 1805.88. Approved and in effect March 11, 1939.]

1937. ✓ Between the issuance of a certificate of purchase of state lands and the cancellation of the certificate for delinquency of payments, the interest of the purchaser in such lands was taxable, but after cancellation the purchaser's interest and the tax lien thereon were extinguished. Christofferson v. Chouteau County, 105 Mont. 577, 74 P. (2d) 427.

1805.88a. Same — notice to owner of his rights. All buildings, fences and other improvements on land embraced within certificates of purchase of state land which were canceled within six (6) years prior to the passage and approval of this act, which said buildings, fences and improvements were placed thereon subsequent to

the date of execution of such certificate of purchase, and in the event said land has not been resold, may be removed by the original purchaser, his heirs, devisees or assigns within ninety (90) days from and after receiving notice of their rights under this act and it shall be the duty of the commissioner of state lands and investments, within sixty (60) days from and after the passage and approval of this act to mail notice to such persons advising them of their rights under the provisions hereof. [L. '39, Ch. 141, § 5. Approved and in effect March 11, 1939. Expiry date of section January 1, 1941.

1805.88b. Land purchaser in default — purchase certificate converted into amortization contract. Whenever a certificate of purchase of state lands embracing lands received from the United States through the enabling act or embracing lands acquired by the state through its farm mortgages is in default six (6) years or less and subject to cancellation by reason of such default, the owner of such certificate, his assignees, heirs or devisees may make application to the state board of land commissioners to have the contract evidenced by such certificate of purchase converted into a thirty-three year amortization purchase contract to draw interest at the rate of five per centum (5%) per annum as provided in this act. [L. '39, Ch. 141, § 1. Approved and in effect March 11, 1939. Expiry date of section January 1, 1941.

1805.88c. Same — same — terms and conditions of contract — discretion of board of land commissioners. The state board of land commissioners may require the payment of whatever portion of the delinquent penalty and interest and unpaid principal may be deemed proper and just and the balance of the entire sum due and owing the state shall be included in the contract to which the existing contract is converted. The said board may in its discretion permit delinquent interest and penalty interest to be included in the new contract together with the remainder of the unpaid purchase price under the existing contract. The board shall at all times do what in its judgment appears to be for the best interests of the state in carrying out the provisions of this act. [L. '39, Ch. 141, § 2. Approved and in effect March 11, 1939. Expiry date of section January 1, 1941.

1805.88d. Construction of act. This act, save and except section 4 [1805.88] hereof shall be regarded strictly as emergency legislation; and shall not repeal any existing statutes relating to state lands but shall be regarded as giving to the state board of land commissioners and to purchasers of state lands

the additional rights herein enumerated. [L. '39, Ch. 141, § 6. Approved and in effect March 11, 1939. Expiry date of act January 1, 1941.

1805.88e. Partial invalidity saving clause. If any section, sub-section, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly declares that it would have passed this act and section, sub-section, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, sub-section, sentence, clause, or phrase be declared unconstitutional, the same being necessary to the welfare of the state of Montana and the political subdivisions thereof by reason of the existence of an extraordinary emergency. [L. '39, Ch. 141, § 7. Approved and in effect March 11, 1939. Expiry date of act January 1, 1941.

1805.88f. Effective date and duration of act. This act shall take effect immediately upon its passage and approval by the governor and shall remain in full force and effect until January 1, 1941, on which date it shall automatically expire and be of no further force and effect save and except section 4 [1805.88] hereof which shall remain in full force and effect. [L. '39, Ch. 141, § 8. Approved and in effect March 11, 1939.

1805.89. Reinstatement of canceled certificates of purchase — leases not affected.

1937. ✓ The right to reinstatement under this section is not absolute, but is discretionary with the board of land commissioners, and it can only be made upon application by the original purchaser or his heirs, assigns, or devisees, and not by the assignee of an invalid tax sale certificate to the land, and furthermore, the board is powerless to allow reinstatement in any event if the land has been sold to another purchaser. *Christofferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

1805.89a. Land purchaser in default — canceled certificate — reinstatement — requirements — conversion into amortization contract. Whenever a certificate of purchase has been canceled and annulled as provided by law, the owner, his assignee, heir or devisee may within six (6) years after the cancellation and annulment of such certificate of purchase make application to the state board of land commissioners for the reinstatement of such certificate, and if the lands have not been resold the board may in its discretion reinstate such certificate upon the payment of at least the oldest delinquent installment on such certificate together with interest thereon. Before the certificate of purchase shall be reinstated evidence must be produced showing that the taxes on the said lands have been paid at

least as far as the installments on the certificate of purchase have been paid to the state. After the reinstatement of such certificate the owner thereof, his assignee, heir or devisee may apply to the state board of land commissioners to have the said certificate converted into a thirty-three year amortization contract as provided in section 1 and section 2 of this act [1805.88b, 1805.88c]. [L. '39, Ch. 141, § 3. Approved and in effect March 11, 1939. Expiry date of section January 1, 1941.

1805.92. Land subject to taxation.

1937. ✓ Between the issuance of a certificate of purchase of state lands and the cancellation of the certificate for delinquency of payments, the interest of the purchaser in such lands was taxable, but after cancellation the purchaser's interest and the tax lien thereon were extinguished. *Christofferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

1805.94. Lands reverting to state — procedure.

1937. ✓ Between the issuance of a certificate of purchase of state lands and the cancellation of the certificate for delinquency of payments, the interest of the purchaser in such lands was taxable, but after cancellation the purchaser's interest and the tax lien thereon were extinguished. *Christofferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

1937. ✓ This section is construed to mean only that the tax lien against the land that has reverted to the state, but not the personal obligation to pay the taxes, shall be cancelled by the county treasurer, since the constitution, Art. 5, § 39, prohibits the cancellation of an obligation due the state. *Christofferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

1937. ✓ Where the certificate of purchase of state lands was cancelled by the county treasurer, on order of the land commissioner, the court held that the legislature might direct the county treasurer to cancel the taxes in so far as they constituted a record lien upon the property, though the court doubted that the legislature could order the cancellation of the taxes themselves. *Christofferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

1805.96. Patents, how executed.

Note. For statute authorizing transfer to the United States of all mineral rights in state lands included in Glacier national park, see § 1805.65-1.

CHAPTER 167

STATE LANDS AND INVESTMENTS— MISCELLANEOUS PROVISIONS

Section

1805.122. Abandoned beds of navigable streams and lakes and certain islands in such streams and lakes declared property of the state of Montana.

1805.123. Same—powers of state land board—surveying—sale or leasing—proceeds—disposition.

Section

1805.124. Same—same—powers of state board of land commissioners—survey—surveyor—appointment—duties—plat and field notes—filing—fees.

1805.125. Same—prior acts validated.

1805.122. Abandoned beds of navigable streams and lakes and certain islands in such streams and lakes declared property of the state of Montana. All lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake in this state and lying between the meandered lines of such stream or lake as the same are shown by the United States survey thereof and all islands existing in the navigable streams or lakes in this state which have not been surveyed by the government of the United States and all lands which at any time in the past comprised such an island or any part thereof except such lands as are occupied by and belong to the adjacent landowners as accretions belong to the state of Montana to be held in trust for the benefit of the public schools of the state. [L. '37, Ch. 36, § 1. Approved and in effect February 19, 1937.

1805.123. Same — powers of state land board — surveying — sale or leasing — proceeds — disposition. The state board of land commissioners of the state of Montana shall have the authority and it shall be the duty of said board to lease or sell said lands in the same manner as other school lands of the state are leased and sold. The state board of land commissioners may sell or lease said lands without having the same surveyed but if the said board shall deem it to be to the best interests of the state the said board shall have said lands surveyed as hereinafter directed. The proceeds from the leasing and sale of such lands shall be disposed of in the same manner as disposition is now made of the proceeds from the leasing and sale of school lands of the state of Montana. [L. '37, Ch. 36, § 2. Approved and in effect February 19, 1937.

1805.124. Same — same — powers of state board of land commissioners — survey — surveyor — appointment — duties — plat and field notes — filing — fees. Whenever the state board of land commissioners shall deem it necessary that any of the lands mentioned in section 1 [1805.122] hereof be surveyed the said board shall cause the same to be surveyed by the county surveyor of the county in which said lands shall be situated; provided, however, that if there is no county surveyor of the county wherein the lands are situated, or if the county surveyor is unable to make such survey or if the best interests of the state so require, the state board of land commissioners

shall appoint a qualified surveyor to make such surveys, and it shall be the duty of such county surveyor, or other surveyor appointed by the state board of land commissioners, to make such surveys when directed so to do by the said state board of land commissioners and he must make an actual survey thereof establishing four (4) corners of every quarter section and connecting the same with a United States survey and within thirty (30) days after such survey file in the office of the county clerk and recorder of said county a copy under oath of his field notes and plat and shall file a duly certified copy of said field notes and plat with the commissioner of state lands and investments. For the services required in connection with the survey the county surveyor or other surveyor appointed by the state board of land commissioners shall be entitled to fees as prescribed in section 4921, revised codes of Montana, 1935. Such fees shall be paid in the same manner as other expenses of the department of state lands and investments of the state of Montana. [L. '37, Ch. 36, § 3. Approved and in effect February 19, 1937.

1805.125. Same — prior acts validated. Any action heretofore taken by the department of state lands and investments and any officer or employee thereof in leasing or selling such lands as mentioned in section 1 [1805.122] hereof and disposing of the proceeds thereof in the same manner as disposition is now made of the proceeds from the leasing and sale of school lands is hereby approved and confirmed. [L. '37, Ch. 36, § 4. Approved and in effect February 19, 1937.

Section 5 repeals conflicting laws.

CHAPTER 170

STATE FORESTS — FORESTER — TIMBER SALES AND DISPOSAL — FIRE WARDENS

Section

1838. Repealed.

1838. Repealed. [L. '39, Ch. 128, § 30, approved and in effect March 9, 1939. See § 1840.30.

CHAPTER 172

STATE BOARD OF FORESTRY

Section

- 1840.1. State board of forestry — creation — personnel — meetings — compensation.
- 1840.2. Functions of board.
- 1840.3. Definitions — fire district — recognized agency — forest fire season — forest protection — owner.

Section

- 1840.4. Forest fires — responsibility — actual owner of land or timber — holder of legal title — land to which act applicable.
- 1840.5. Powers of board — classification of forest areas — creation of fire districts — providing protection of lands — making and enforcement of rules — cooperation with federal agencies.
- 1840.6. Powers of board — giving technical advice.
- 1840.7. Board to assist board of land commissioners.
- 1840.8. State as owner of land — assessments — duty to pay.
- 1840.9. Owner of classified forest lands — duties.
- 1840.10. Compliance by owner — what constitutes.
- 1840.11. Cost of protection — determination — duties of board's secretary — delinquencies of land owners — information — certification to county clerk and recorder — collection of amounts due as taxes.
- 1840.12. Payment under protest.
- 1840.13. Amount due for protection — lien on land — foreclosure.
- 1840.14. Forest fires — setting — permit.
- 1840.15. Camp fires — failure to extinguish — penalty.
- 1840.16. Fires — permits — failure to comply with — penalty.
- 1840.17. Burning cigarettes or other objects — throwing away — penalty.
- 1840.18. Wood or coal burning engines — operation without spark arrester forbidden.
- 1840.19. Sawmills — restrictions.
- 1840.20. Signs — destruction — penalty.
- 1840.21. Fines collected — disposition — costs.
- 1840.22. Cooperation of boards of land and county commissioners.
- 1840.23. Foresters' cooperative work fund — what moneys to be placed in — disposition — other funds — how expended.
- 1840.24. Foresters' cooperative work fund — disbursement.
- 1840.25. Ex-officio fire wardens.
- 1840.26. State forester — powers and duties — office — records.
- 1840.27. Violations of act — penalty.
- 1840.28. Purposes of act — taxes — forest protection — compensation for benefits.
- 1840.29. Partial invalidity saving clause.
- 1840.30. Repeals.
- 1841, 1842. Repealed.

1840.1. State board of forestry — creation — personnel — meetings — compensation. For the purposes of protection and conservation of forest resources, forest range and water, of regulation of stream flow, and of prevention of soil erosion, and for the further purpose of more adequately promoting and facilitating the cooperation, financial and otherwise, between the state of Montana and all of the public and private agencies with which it is now or later may be associated in such work, there is hereby created the Montana state board of forestry, hereinafter designated as the board. The board shall consist of seven members, who shall be appointed by the governor as follows: One member of the state water conservation board of Montana, during his continuance in such office, designated by

such board; the dean of the Montana school of forestry during his continuance in such office; one elector of the state of Montana, appointed upon recommendation of the Black-foot forest protective association, or its successors; one elector of the state of Montana, appointed upon recommendation of the northern Montana forestry association, or its successors; one elector of the state of Montana, appointed upon recommendation of the Montana lumber manufacturers' association, or its successors; one elector of the state of Montana, appointed upon the joint recommendation of the Montana stock growers' association and Montana wool growers' association, or their successors; and one elector of the state of Montana, appointed upon recommendation of the regional forester of region No. 1 of the United States forest service, as a representative of the United States forest service. The members appointed shall serve for a term of four years, or during their continuance in office as the case may be. In the event of death, resignation or disqualification of any member of the board, his successor shall be appointed in the same manner that he was appointed, and shall serve for the remainder of his term. The board shall hold two regular meetings each year at the times and places designated by it. The dates of such regular meetings shall be shown in the permanent minute book of the board and notice of the date, time and place of each meeting shall be given in the manner prescribed by the board. The board shall at its first regular annual meeting each year elect a chairman to serve during the ensuing year. The state forester of Montana shall serve as secretary of the said board without compensation for such services or for any work done for the board, other than his regular compensation as state forester of Montana. No compensation shall be paid to any member of the said board by the state of Montana for any services rendered or work done, except that members of the board attending authorized regular or special meetings for transacting official business will be allowed actual expenses in attendance at such meetings. Special meetings may be called in the manner prescribed by the board. [L. '39, Ch. 128, § 1. Approved and in effect March 9, 1939.]

1840.2. Functions of board. It shall be the function of the board to cooperate in an advisory capacity with the state water conservation board and all public and other agencies in the development, protection and conservation of the forest, range and water resources in the state of Montana, and to carry out the specific

authorities and duties hereinafter imposed upon it. [L. '39, Ch. 128, § 2. Approved and in effect March 9, 1939.]

1840.3. Definitions — fire district — recognized agency — forest fire season — forest protection — owner. The following words and phrases used in this act are hereby defined:

“Organized forest protection district” is defined as a definite forest land area, the boundaries of which are fixed, and wherein, through the medium of an agency recognized by the board, the forest land owners, whether state, county, municipal or private, pay the actual cost of fire protection and fire suppression on a pro rata basis for acreage owned within the district.

“Fire district” is defined as a subdivision of an organized forest protection district, or a forest area outside the boundaries of an organized forest protection district, but adjacent thereto and which can be made a part thereof.

“Recognized agency” is defined as an association of owners of forest lands in an organized forest protection district, organized for the purpose of providing forest protection and fire suppression in such district and financed by the owners in said district, and recognized by the board as giving adequate fire protection to such forest lands in accordance with rules and regulations prescribed by the board. Any public agency administering and protecting forest lands may also be recognized by the board as such an agency.

“Forest fire season” is defined as the period of each year beginning on May first and ending on September thirtieth, inclusive; provided, however, that in the event of excessive or great fire danger, the board may expand the said season within any district, or in any part thereof, for not more than thirty extra days, and when so expanded the board shall give such public notice thereof as it may deem necessary.

“Forest protection” is defined as the work of prevention, detection and suppression of fire in forest material or on forest land.

“Owner” is defined as the person, firm, association or corporation having the actual, beneficial ownership of forest land, or timber, other than an easement, right of way, or mineral reservation. [L. '39, Ch. 128, § 3. Approved and in effect March 9, 1939.]

1840.4. Forest fires—responsibility—actual owner of land or timber — holder of legal title — land to which act applicable. (a) In any instance where the owner as herein defined does not appear upon the public records as the holder of the legal title to such land or timber, he is nevertheless primarily responsible for

the performance of the acts and duties imposed upon him by this act. In addition thereto, the holder of the legal title to such land or timber as it may appear upon the public records is hereby made secondarily responsible for the performance of the acts and duties imposed upon the owner by this act and is subject to the same liabilities and penalties as such owner. Where the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by this act shall be upon the owner of the timber.

(b) This act shall apply to all forest lands within the state of Montana which shall be officially classified by the board as forest lands for which conservation and fire protection measures are reasonably required. [L. '39, Ch. 128, § 4. Approved and in effect March 9, 1939.]

1840.5. Powers of board—classification of forest areas—creation of fire districts—providing protection of lands—making and enforcement of rules—cooperation with federal agencies. To effectuate, accomplish and maintain the purposes of this act, the board is hereby authorized and empowered:

(a) To classify the forest land areas of the state as to forest lands for which conservation and fire protection measures are reasonably required, and to change or modify such classification from time to time as in its judgment shall be proper.

(b) To create fire districts in any organized forest protection district upon recommendation thereof by the recognized agency in such district, the creation of such fire districts to be based upon differences in classification as to timber types, fire hazards, and cost of forest protection between such fire districts and other parts of the forest protection district in which the same are situated. When such fire districts are created by the board the assessment upon owners therein for the cost of forest protection as provided for by this act shall be fixed and determined in accordance with such classification.

(c) To provide for the protection of any forest lands by its own organization, or by contract or any other feasible means, independently or in cooperation with any federal, state or other recognized agency or agencies.

(d) To make and enforce reasonable rules and regulations for the purpose of enforcing and accomplishing the provisions and purposes of this act; provided, however, that such rules and regulations shall not conflict with the powers of the state board of land commissioners.

(e) To cooperate with the government of the United States and any of its bureaus, services and agencies in accordance with federal statutes and regulations thereunder. [L. '39, Ch. 128, § 5. Approved and in effect March 9, 1939.]

1840.6. Powers of board—giving technical advice. The board is hereby authorized and empowered to give technical and practical advice to the farmers of the state concerning soil and forest conservation and the establishment and maintenance of woodlots, windbreaks and shelters. [L. '39, Ch. 128, § 6. Approved and in effect March 9, 1939.]

1840.7. Board to assist board of land commissioners. The board is hereby directed to assist the state board of land commissioners in the protection, economic development, and use of the state forests and forest land held by the state for the purposes and benefit of the common schools and state institutions. [L. '39, Ch. 128, § 7. Approved and in effect March 9, 1939.]

1840.8. State as owner of land—assessments—duty to pay. Where the state has title to forest lands within any organized forest protection district, it shall be considered as an owner and it shall list its lands and pay the assessments to the recognized agencies responsible for lands in such organized forest protection districts. [L. '39, Ch. 128, § 8. Approved and in effect March 9, 1939.]

1840.9. Owner of classified forest lands—duties. Every owner of forest land classified as such by the board is hereby required to furnish protection against the starting or existence, and to suppress the spread, of fire on such land during the full period of each forest fire season defined by this act. Such protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection to be prescribed by the board. If such owner does not provide for such protection and suppression, said board may provide the same, at a cost of not less than one cent or more than five cents per acre per annum, and in the event thereof, the owner of such land shall pay to the county treasurer of the county in which such land is situated, the charge for the same approved by the board, in accordance with the provisions of this act. [L. '39, Ch. 128, § 9. Approved and in effect March 9, 1939.]

1840.10. Compliance by owner—what constitutes. Every owner of forest lands within an organized forest protection district, while a member of, or while participating in a recognized agency for forest protection shall be deemed to have fully complied with the re-

quirements of section 9 [1840.9] of this act. [L. '39, Ch. 128, § 10. Approved and in effect March 9, 1939.

1840.11. Cost of protection — determination — duties of board's secretary — delinquencies of land owners — information — certification to county clerk and recorder — collection of amounts due as taxes. On or before the first Tuesday in September of each year, the secretary shall determine the actual cost per acre of forest protection furnished and provided by the board in each organized forest protection district, fire district and in all other forest land areas, said cost to be calculated to the end of the preceding fiscal year, June 30. The secretary shall further determine the names of all owners who shall have failed to provide the forest protection for their lands required by this act, together with the description of such lands and the acreage thereof, and calculate the total amount due to the board from each such owner for such forest protection which shall not exceed the maximum hereinbefore specified.

The secretary shall submit a statement of the foregoing to the board and upon approval thereof by the board, the secretary shall certify in writing to the county clerk and recorder of each county, the names of such owners of forest lands in his county, together with a description of such lands and a statement of the amount so found to be due and owing by each of such owners to the board for forest protection which shall not exceed the maximum hereinbefore specified.

Upon receiving such certificate from the secretary showing the amounts due, the clerk and recorder shall extend the amounts so certified upon the county tax rolls covering such lands, and such sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums so collected shall be promptly transmitted to the state treasurer, who is hereby required to deposit the same in a special fund designated the foresters' cooperative work fund, as hereinafter provided for. [L. '39, Ch. 128, § 11. Approved and in effect March 9, 1939.

1840.12. Payment under protest. Any owner who is required to pay to the county treasurer any sum for forest protection as required by this act and who contends that he is not legally obligated to pay such sum or some part thereof, shall pay the same to the county treasurer under written protest stating the reasons for such protest. Such payment under protest, and all proceedings

subsequent thereto, shall be in conformity with the provisions of the law of the state of Montana, providing for the payment of taxes under protest and action to recover the same. In the hearing and determination of any such action to recover such payment under protest, all questions of the legality and reasonableness of the proceedings of the board may be reviewed and decided. [L. '39, Ch. 128, § 12. Approved and in effect March 9, 1939.

1840.13. Amount due for protection — lien on land — foreclosure. Whenever the said board provides forest protection during a forest fire season for any forest land or timber not protected by the owner thereof as required by this act, the amount due for such forest protection shall be and become a lien upon such land or timber which shall continue until such time as the amount due shall have been paid. Such lien shall have the same force, effect and priority as general tax liens under the laws of the state of Montana, and shall be subject and inferior only to tax liens on such lands. The county attorney of the county in which such land is situated shall on request of the said board foreclose the said lien in the name of the state of Montana and in the manner provided by law, or said county attorney upon the request of the said board, shall institute an action against the forest landowner, in the name of the state, in any district or justice court having jurisdiction, to recover the debt, and the state in such action shall not be required to pay any fees or costs to the clerk of the court or justice of the peace. The complaint and all subsequent proceedings in such action shall conform as nearly as practicable to that provided by section 2254, revised codes of Montana of 1935. The remedies provided by this section shall be deemed cumulative and shall not affect the other provisions of this act for the payment and collection of amounts due to the board. [L. '39, Ch. 128, § 13. Approved and in effect March 9, 1939.

1840.14. Forest fires — setting — permit. During the forest fire season or any expansion thereof, defined by this act, no person shall ignite or set any forest fire, or slash burning fire, or land clearing fire, or debris burning fire, or any open fire, within any forest lands, without having obtained an official written permit to ignite or set such fire from a fire warden or peace officer authorized by the board to issue such permits for such lands; provided, that no permit shall be required to build, set or ignite a campfire within and upon a designated improved camping ground, or upon a plot of land from which all vegetable and inflammable matter and debris shall have been removed to a point where it may

not become ignited by the said campfire or by sparks therefrom. [L. '39, Ch. 128, § 14. Approved and in effect March 9, 1939.

1840.15. Camp fires — failure to extinguish — penalty. Any person who shall fail to extinguish any campfire set or ignited by him within any forest lands before leaving the same, or shall fail to extinguish any campfire used by him or left in his charge, before leaving the same, or who shall negligently allow such fire to spread from the plot described in section 14 [1840.14], shall be guilty of a misdemeanor. [L. '39, Ch. 128, § 15. Approved and in effect March 9, 1939.

1840.16. Fires — permits — failure to comply with — penalty. Every person to whom a written permit shall have been issued to set or ignite a fire within forest lands during the forest protection season defined by this act, shall comply strictly with the provisions of such permit. If such person shall fail to comply with such provisions, or shall leave such fire unattended, or shall leave such fire before it shall have been totally extinguished, or shall negligently allow such fire to spread from or beyond the burning area defined by the said permit, he shall be guilty of a misdemeanor. The board, with the assistance of the state forester, shall prescribe the form and substance of such permit. [L. '39, Ch. 128, § 16. Approved and in effect March 9, 1939.

1840.17. Burning cigarettes or other objects — throwing away — penalty. During the forest fire season, as defined by this act, any person who shall throw or place any lighted cigarette, cigar, ashes or other flaming or glowing substance or any substance or thing that may cause a fire, in any place where such lighted cigarette, cigar, match, ashes, or other flaming or glowing substance, or other substance or things, may directly or indirectly start a fire in or near any forest material, or throw from a vehicle any lighted cigarette, cigar, ashes or other flaming or glowing substance, or any substance or thing that may cause a fire, shall be guilty of a misdemeanor. [L. '39, Ch. 128, § 17. Approved and in effect March 9, 1939.

1840.18. Wood or coal burning engines — operation without spark arrester forbidden. During the forest fire season, as defined by this act, no person shall use, drive or operate within any forest lands, any wood or coal burning locomotive, logging engine, portable engine, traction engine, or stationary engine, or any coal or wood burning jammer or loader, or internal combustion engine, which is not equipped with a modern, efficient and adequate spark arrester and with modern, efficient de-

vices to prevent the escape of sparks, coals, cinders and other burning material from the smoke stack, fire box, ash pan or exhaust of any such engine, jammer or loader. And it shall be unlawful for any person to operate any such engine, jammer or loader, within any forest lands during any forest protection season, except when such spark arrester and other devices herein defined are efficient, complete and properly installed for the purpose intended. [L. '39, Ch. 128, § 18. Approved and in effect March 9, 1939.

1840.19. Sawmills — restrictions. No sawmill located within or contiguous to forest lands shall accumulate in one pile, sawdust in excess of an amount resulting from the sawing of 500,000 feet log scale of saw logs, provided, however, that a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the state forester. Each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs in accordance with regulations issued by the board of forestry. [L. '39, Ch. 128, § 19. Approved and in effect March 9, 1939.

1840.20. Signs — destruction — penalty. Any person who shall destroy, deface, remove, injure, or disfigure any sign, placard, proclamation, order, warning or notice issued by any federal, state, or forest protection agency under the provisions of this act and erected or posted at any point in the state, shall be guilty of a misdemeanor. [L. '39, Ch. 128, § 20. Approved and in effect March 9, 1939.

1840.21. Fines collected — disposition — costs. All fines collected in any court of the state under the provisions of this act shall be transferred to the state treasurer for deposit, in, and for the credit of, the foresters' cooperative work fund as hereinafter provided. Whenever a person is convicted in any court of a violation of this act, the court shall have power to levy and collect as costs in such case the amount necessary to compensate the county for the expenditures made in and for the prosecution of such offender against the provisions of this act. Such costs when collected shall be deposited by the court, with the proper county treasurer for the benefit of such county. [L. '39, Ch. 128, § 21. Approved and in effect March 9, 1939.

1840.22. Cooperation of boards of land and county commissioners. The state board of land commissioners and boards of county commissioners may cooperate with the board to the extent legally permissible, in providing means and methods of safeguarding the forest land lying within the state and in preventing

fire nuisance thereon. The state board of land commissioners and the boards of county commissioners may list any forest lands under their jurisdiction with any recognized agency or the board for forest protection. Such moneys as the state and counties shall become liable for under the provisions of this section shall be paid from any funds provided by law for the protection of the forest lands owned by the state and counties. [L. '39, Ch. 128, § 22. Approved and in effect March 9, 1939.]

1840.23. Foresters' cooperative work fund — what moneys to be placed in — disposition — other funds — how expended. In compliance with section 1830.10 of the revised codes of Montana, 1935, all moneys received from all public agencies, private agencies and individuals cooperating with the state forester or the board of forestry, shall be deposited with the state treasurer and placed to the credit of the foresters' cooperative work fund. The following funds may be expended as directed by the board for fire prevention, detection and suppression: All moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for the violations of this act; the state's share of the cooperative fire protection funds allocated by the federal government and any other funds provided for the purposes herein indicated. All other cooperative funds collected, appropriated or allocated for the use of the state forester, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of windbreaks and woodlots in localities where such forest plantings are helpful, and funds for other cooperative work, shall not be expended except for the specific purposes for which the same were collected, appropriated or allocated. [L. '39, Ch. 128, § 23. Approved and in effect March 9, 1939.]

1840.24. Foresters' cooperative work fund — disbursement. All cooperative moneys, collected, appropriated, or allocated for the use of the state forester and deposited with the state treasurer in the foresters' cooperative work fund, shall be paid out after approval and request of the said board and all vouchers or claims shall be signed on behalf of the said board by the secretary thereof. The state board of examiners is hereby authorized to approve for payment (out of any moneys

available for purposes designated) all claims properly executed and submitted in the manner provided by law to the person, firm, corporation or public or private agency entitled thereto in compliance with the provisions of this act. [L. '39, Ch. 128, § 24. Approved and in effect March 9, 1939.]

1840.25. Ex-officio fire wardens. The officers, employees and persons hereinafter designated are hereby declared ex-officio fire wardens to serve without compensation for the purpose of enforcing the penal provisions of this act: Members of the Montana state board of forestry, the state forester and all regular employees of his office, officers of organized forest protection districts, members of the Montana highway patrol, all field officers, in the United States forest service residing in Montana, game and deputy game wardens, officers of the national park service and the Indian service situated in Montana. Such ex-officio fire wardens shall have all the powers vested by section 1834, revised codes of Montana of 1935 in fire wardens. [L. '39, Ch. 128, § 25. Approved and in effect March 9, 1939.]

1840.26. State forester — powers and duties — office—records. The state forester shall be the agent of the said board and he shall have power to enforce any and all provisions of this act and the rules and regulations of the board made thereunder. He shall be the representative of the board in organizing forest protection districts to be approved by the said board. He shall be the co-ordinating officer of the board in the co-ordination of the work and efforts of all agencies cooperating with the said board, in the protection of forest land, and in the prevention and abatement of any forest fire nuisances thereon, under the provisions of this act. He shall be the expert adviser of the board and of agencies cooperating with the board and existing under this act, in all matters relating to the creation of forest protection districts, and disposal of slash and slash hazards, the prevention and suppression of forest fires and forest fire nuisances, within forest protection districts. His office shall be the principal place of business of the board and all orders, rules, regulations, maps, documents, publications, minutes of regular and special meetings of the board, notices, forms, correspondence, petitions and all and every paper connected with any part of the official business of the board shall be filed in his office. Such records shall be open to public inspection during business hours subject to such reasonable rules as the board may prescribe in writing for the protection of such records and the convenience

of the public and the employees of the state forester. [L. '39, Ch. 128, § 26. Approved and in effect March 9, 1939.

1840.27. Violations of act — penalty. Any person who violates any term or provisions of this act, or any rule or regulation promulgated by the board pursuant to this act, is hereby declared to be guilty of a misdemeanor unless otherwise provided by this act, and shall be punished by a fine of not more than five hundred dollars (\$500.00) or imprisonment in a county jail for not more than six (6) months, or both such fine and imprisonment. [L. '39, Ch. 128, § 27. Approved and in effect March 9, 1939.

1840.28. Purposes of act — taxes — forest protection — compensation for benefits. It is the intent and purpose of this act not to impose or levy, or cause to be imposed or levied, any tax upon the property of any persons. This act is passed and adopted in the exercise of the police power of the state of Montana to conserve and protect the forests and resources of the state as herein provided. All payments required by the act by owners of forest lands are hereby declared to be compensation for benefits actually received by such owners in the protection of their lands as herein provided for. [L. '39, Ch. 128, § 28. Approved and in effect March 9, 1939.

1840.29. Partial invalidity saving clause. If any section, subdivision, sentence or clause of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. [L. '39, Ch. 128, § 29. Approved and in effect March 9, 1939.

1840.30. Repeals. Sections 1838, 1841, 1842, 2763, 2764, 2767, 2768, 2770, 2775, 2776, 2777, 2778, 2778.1, 2778.2, 2778.3, 2778.4, 6600 and 6601, of the revised codes of Montana of 1935, are hereby repealed. [L. '39, Ch. 128, § 30. Approved and in effect March 9, 1939.

Section 31 repeals conflicting laws.

1841, 1842. Repealed. [L. '39, Ch. 128, § 30. See § 1840.30. Approved and in effect March 9, 1939.

CHAPTER 173A

STATE PARKS AND FORESTS

Section

- 1842.4. Acquisition of land—board of land commissioners—authority.
- 1842.5. Development — expenditures — products — sale—rules and regulations.
- 1842.6. Revenues—disposition.
- 1842.7. Obligations—payment from revenues.
- 1842.8. Sale, exchange, or lease—power of board.

1842.4. Acquisition of land — board of land commissioners — authority. That the state board of land commissioners is hereby authorized to accept gifts, donations or contributions of land suitable for forestry or park purposes, and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the state board of land commissioners are desirable for state forests. [L. '37, Ch. 159, § 1. Approved and in effect March 16, 1937.

1842.5. Development — expenditures — products — sale — rules and regulations. When lands are acquired or leased under section 1 [1842.4] of this act, the state board of land commissioners is hereby authorized to make expenditures from any funds not otherwise obligated, for the management, development and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules and regulations as may be necessary to carry out the purposes of this act. [L. '37, Ch. 159, § 2. Approved and in effect March 16, 1937.

1842.6. Revenues — disposition. All revenues derived from lands acquired under the provisions of this act shall be segregated by the state treasurer for the use of the state board of land commissioners in the acquisition, management, development and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty per cent of all net profits accruing from the administration of such lands shall be applicable for such purposes as the legislature may prescribe, and fifty per cent shall be paid into the school fund of the county in which lands are located. [L. '37, Ch. 159, § 3. Approved and in effect March 16, 1937.

1842.7. Obligations — payment from revenues. Obligations for the acquisition of land incurred by the state board of land commissioners under the authority of this act shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the state. [L. '37, Ch. 159, § 4. Approved and in effect March 16, 1937.

1842.8. Sale, exchange, or lease — power of board. The state board of land commissioners shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of the act when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks: Provided, however, that said sale, lease or exchange shall not be contrary to the terms of

any contract which it has entered into. [L. '37, Ch. 159, § 5. Approved and in effect March 16, 1937.

Section 6 repeals conflicting laws.

Section 7 is partial invalidity saving clause.

CHAPTER 173B

STATE PARK COMMISSION

Section

1871.1. Creation of commission—purpose.

1871.2. Members — appointment — terms — qualifications—compensation.

1871.3. Organization — officers — secretary and duties—duties of chairman—employees—meetings.

1871.4. Powers and duties of commission.

1871.5. Fees and charges—state park fund.

1871.6. Rules and regulations—penalties.

1871.7. Roads connecting highways with parks—construction by highway department—funds.

1871.8. Cooperation of state and federal agencies.

1871.9. Reports.

1871.1. Creation of commission — purpose.

That for the purpose of conserving the scenic, historic, archaeologic, scientific and recreational resources of the state, and of providing for their use and enjoyment, thereby contributing to the cultural, recreational and economic life of the people and their health, the Montana state park commission (hereinafter referred to as the commission) is hereby created. [L. '39, Ch. 48, § 1. Approved and in effect February 23, 1939.

1871.2. Members — appointment — terms — qualifications — compensation.

The commission shall be composed of three (3) members to be appointed by the governor within thirty (30) days after the effective date of this act, for terms as follows: One (1) for a term of two (2) years, one (1) for a term of four (4) years, and one (1) for a term of six (6) years. Thereafter succeeding members shall be appointed for a term of six (6) years, except that vacancies occurring otherwise than by expiration of term shall be filled by appointment for the unexpired term. The commissioners shall be qualified electors of the state of Montana and shall be persons who have displayed an active interest in and knowledge of the powers and duties conferred by this act. The commissioners shall serve without compensation, but shall be entitled to receive their actual and necessary expenses incurred in the performance of their official duties. [L. '39, Ch. 48, § 2. Approved and in effect February 23, 1939.

1871.3. Organization — officers — secretary and duties — duties of chairman — employees — meetings.

Within thirty (30) days after

their appointment and qualification, the commissioners shall meet and select one (1) of their number as chairman, who shall serve for one (1) year and until his or her successor is selected. The state forester shall serve as the secretary of the commission and shall also be known as the director of state parks. The secretary shall keep an accurate record of the transactions of the commission, and shall be responsible to the commission for the execution of its policies. The headquarters of the commission shall be at Missoula, but meetings may be held at any point within the state. The chairman shall convene regular meetings in January and July of each year. Special meetings may be held on the call of the chairman or on request of a majority of the members, as the emergency may require. Any two (2) members of the commission shall constitute a quorum for the transaction of any and all business at any regular or special meeting. In the absence of the chairman, the remaining members may appoint a temporary chairman who shall have all of the powers of the chairman in the absence of the chairman. The chairman shall preside at all meetings, and sign all documents with the secretary which require the signature of the commission. The director, with the consent and approval of the commission, shall appoint, prescribe the duties, and fix the compensation of such assistants and employees as may be necessary for the carrying out of the provisions of this act. [L. '39, Ch. 48, § 3. Approved and in effect February 23, 1939.

1871.4. Powers and duties of commission.

The commission is hereby authorized and directed to make a study to determine the scenic, historic, archaeologic, scientific and recreational resources of the state, and shall have power by purchase, lease, agreement, or by acceptance of donations, or condemnation, to acquire for and in the name of the state, any such areas, sites or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The commission shall also have power in its discretion to receive and accept in the name of the state, in fee or otherwise, any such areas, sites, or objects conveyed, entrusted, donated, or devised to the state, and with like discretion to accept gifts, bequests, or contributions of money or other property to be expended or used for any of the purposes of this act; provided, that no contract shall be entered into or other obligation incurred under the provisions of this act until moneys have been appropriated therefor by the legislature or are otherwise made available as herein provided. The commission shall also have

jurisdiction, custody and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments which are now under the control and management of the state, except way-side camps and other public conveniences acquired, improved and maintained by the state highway commission and contiguous to the state highway system. [L. '39, Ch. 48, § 4. Approved and in effect February 23, 1939.

1871.5. Fees and charges—state park fund. The commission shall have power to levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided, and to grant such concessions as it may deem advisable. All moneys derived from the activities of the commission, and from unconditional gifts, donations, bequests and endowments, shall be deposited in the state treasury to the credit of the state park fund, which fund is hereby created, and shall constitute a continuing fund to be used and expended by the commission for any of the purposes of this act. [L. '39, Ch. 48, § 5. Approved and in effect February 23, 1939.

1871.6. Rules and regulations—penalties. The commission shall have power to make rules and regulations governing the use, occupancy and protection of the lands and property under its control. Any person who violates any such rule or regulation shall be deemed guilty of a misdemeanor and punished by a fine of not more than one hundred dollars (\$100.00) or by imprisonment for not more than six (6) months, or both, and be adjudged to pay all costs of the proceedings. [L. '39, Ch. 48, § 6. Approved and in effect February 23, 1939.

1871.7. Roads connecting highways with parks—construction by highway department—funds. The state highway department is hereby authorized, upon agreement with the commission, to construct, improve and maintain with state highway funds connecting roads between existing state highways and lands and properties under the jurisdiction of the commission; provided, that each such road shall not exceed a total length of ten (10) miles. [L. '39, Ch. 48, § 7. Approved and in effect February 23, 1939.

1871.8. Cooperation of state and federal agencies. In carrying out the provisions of this act the commission may seek and accept the cooperation of other state and local agencies, and the agencies of the federal government, and may assist and cooperate with other state agencies, political subdivisions of the state, with neighboring states, and with the federal government in matters relating to

acquiring, planning, establishing, developing, improving, or maintaining any park, parkway, recreational area, monument, historic site or archaeological site. [L. '39, Ch. 48, § 8. Approved and in effect February 23, 1939.

1871.9. Reports. The commission shall on or before the first day of December immediately prior to each regular session of the legislature submit to the governor for transmission to the legislature, a report covering its operations for the preceding biennium, and may include such recommendations relating to the purpose and provisions of this act as may be deemed advisable. [L. '39, Ch. 48, § 9. Approved and in effect February 23, 1939.

Section 10 repeals conflicting laws.

CHAPTER 175

OIL AND GAS ON STATE LANDS—DISPOSITION OF DEPOSITS—LEASES—REGULATIONS

1882.1. State oil and gas leases—reservations—royalty—waste.

1938. Sections 1882.1 to 1882.24 cited in *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1882.2. Area to be leased—limitations—term of leases—operating agreements.

1938. ✓ Where it was contended that the state board, by pooling school lands with those of private owners of land under an agreement for the exploiting of the gas resources thereof under an agreement for unit operation, relinquished the state's royalties therefrom to the owners of the remainder of the land, the court said that the contention overlooked the migratory nature of gas. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. ✓ Where the state land board had authority to pool school lands with those privately owned, under a unit operation agreement for the development of gas resources, and did what it thought was for the best interests of the state, the court is not concerned with the wisdom of its choice, it not appearing affirmatively that the interests of the state had not been fully protected. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. ✓ The final paragraph of this section is a legislative declaration that pooling agreements are not to be restricted by the acreage limitation of 640 acres mentioned earlier in the section. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. ✓ The state land board has the duty of insuring to the state the full market value of the estate disposed of, in making oil and gas leases under an agreement to operate under the unit plan, and receiving the proceeds and providing that they remain intact, and on such determination this court will not substitute its opinion for the opinion of the board, nor will it control the discretion of the board unless it appears that the action of the board is

arbitrary and, in effect, fraudulent. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. The purpose of pooling agreements is to conserve the natural resources of an area, to promote its development in an orderly and economical manner to meet market conditions, to avoid waste, and to insure a more equitable distribution of the proceeds of production. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. The contention that this section authorized the pooling of acreage for gas production, only in case the entire geologic structure is included in such agreement held untenable. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. In *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407, it was said that "the mere fact that a pooling of less than the total area of a structure does not secure all the benefits which would flow from an inclusion of the entire area is no reason why the legislature may not authorize the acceptance of the partial benefits."

1938. This section does not assume to restrict the board as to the kind of pooling agreement that it might make, so long as it pools state lands in a recognized plant of unit operation. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. Modifications in consolidated leases for unit operation of oil and gas lands of the state and individuals, whereby alterations were made in the requirements as to drilling wells by the lessees held not in violation of this section which authorizes modifications with respect to delay drilling penalties, since drilling requirements and obligations are so interwoven with delay drilling penalties that modification of the one contemplates modifications of the other. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. Though the original leases of state lands provided that the state land board could curtail production, and the consolidated unit operation leases provided that the lessees of producing wells could cease production, if they deemed it advisable, on paying a certain sum per year for each well shut down, such modification was held authorized under the statute. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. Where the practical effect of the methods of terminating a lease by the lessee was the same in the original lease as in the consolidated unit operation lease, the change was held not objectionable. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. Modifications with regard to delay drilling penalties held warranted under this section. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. That the state merely pooled its gas rights, leaving the oil rights as they were in the original leases, did not nullify its attempt to take advantage of the pooling plan. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. Whether the modifications in consolidated unit operation leases were accomplished by re-writing or by interlineations in the original leases held immaterial. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. Where the consolidated lease did not change the percentage of the royalty, but merely apportioned

it according to acreage owned by the state, the change was authorized by this section. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. "Under the broad powers granted to the board by section 1882.7, we think section 1882.2, so far as it enumerates the modifications which the board can make, was not intended to be exclusive. We think the board has the right to change or modify existing leases in any respect not inconsistent with the enabling act, the constitution, or statutes. This right exists by the express provision in section 1882.7 and is not denied by section 1882.2." *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. This section exempts the consolidated lease agreements from the statutory provisions which may be in conflict with the particular lease. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. Leases of state lands under pooling agreements are not in violation of Art. 17, §§ 1, 2 of the constitution, or of section 11 of the enabling act. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. An agreement by the state board of land commissioners pooling school lands with those of private owners, under a unit operation plan, wherein it was provided that land owners could use gratis what gas they needed for domestic purposes did not violate the enabling act, the constitution, or statutory provisions, since such provision were rightly considered in determining what the market value of the interest of the state was at the time the agreement was made. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1938. An agreement of the state land board to pool school lands with those of private owners for the development of gas wells and production of gas therefrom, and apportioning royalties among the owners, was held to fully protect the state's rights to the gas. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1882.4. Royalty—time for payment—computation.

1938. A provision in a consolidated lease of state and private pooled lands that each of the lessors should have gas free of cost from any gas well on the premises for his reasonable domestic use did not unlawfully alter the royalty fixed in the original lease where the consolidated agreement adopted sections 1882.2 to 1882.19 so far as applicable and not inconsistent with the consolidated lease and agreement as a part of it as if actually written into the agreement. *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

1882.7. Rules and regulations may be made by board.

1938. "Under the broad powers granted to the board by section 1882.7, we think section 1882.2, so far as it enumerates the modifications which the board can make, was not intended to be exclusive. We think the board has the right to change or modify existing leases in any respect not inconsistent with the enabling act, the constitution, or statutes. This right exists by the express provision in section 1882.7 and is not denied by section 1882.2." *Toomey v. State Board of Land Commissioners*, 106 Mont. 547, 81 P. (2d) 407.

CHAPTER 177

RESERVATION OF RIGHT TO PURCHASE GENERAL FUND WARRANTS—BONDS, PROVISIONS CONCERNING — GENERAL PROVISIONS

1912. Prior right to purchase general fund warrants reserved to state.

1935. After a type of disability has been finally ascertained, whether it be temporary-partial, temporary-total, permanent-partial, or permanent-total, payments must be made during the continuance of the disability, not exceeding the maximum time, in accordance with the act and as prescribed therein for the particular type of disability involved. It is not necessary that the total allowance all be included in one order, or all be made at one time; no order may be considered as full allowance unless the maximum is contemplated and included therein, and even then such order and allowance must still be subject to modification or change under the continuing jurisdiction of the board. *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

1935. Injured employee with wife and child under 18, held entitled to \$18 per week during compensation period. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1913. Notice to land board of bond sales.

1935. After a type of disability has been finally ascertained, whether it be temporary-partial, temporary-total, permanent-partial, or permanent-total, payments must be made during the continuance of the disability, not exceeding the maximum time, in accordance with the act and as prescribed therein for the particular type of disability involved. It is not necessary that the total allowance all be included in one order, or all be made at one time; no order may be considered as full allowance unless the maximum is contemplated and included therein, and even then such order and allowance must still be subject to modification or change under the continuing jurisdiction of the board. *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

1914. Waiver of notice.

1935. After a type of disability has been finally ascertained, whether it be temporary-partial, temporary-total, permanent-partial, or permanent-total, payments must be made during the continuance of the disability, not exceeding the maximum time, in accordance with the act and as prescribed therein for the particular type of disability involved. It is not necessary that the total allowance all be included in one order, or all be made at one time; no order may be considered as full allowance unless the maximum is contemplated and included therein, and even then such order and allowance must still be subject to modification or change under the continuing jurisdiction of the board. *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

CHAPTER 179

CAREY LAND ACT BOARD— STATE ENGINEER

Section

1956.2. Cooperation with Wyoming in water right matters—appropriation by Wyoming—approval by conservation board—powers of board—reciprocal legislation by Wyoming.

1956.2. Cooperation with Wyoming in water right matters—appropriation by Wyoming—approval by conservation board—powers of board—reciprocal legislation by Wyoming. Appropriations of water for beneficial use in the state of Montana may be made, by the state of Wyoming to which it is desired to divert such water, when and only after such state shall have enacted legislation generally similar in purport to the provisions of this act, whereby water may be appropriated within the state of Wyoming for use within the state of Montana. Such appropriations shall be valid only when the state water conservation board shall have issued a certificate of appropriation that the waters appropriated have been or will be used for a beneficial purpose as set forth in the certificate; such certificate shall be filed with and be made a part of such appropriation of water. The state water conservation board is empowered and authorized by and through the state engineer or other authorized agent to cooperate with the state engineer of the state of Wyoming, in the determination, supervision and control of all water and water appropriations on all interstate streams; and to these ends the state water conservation board, by and with the consent of the governor may enter into the necessary agreements with the state engineer or other agency in control of such subject, to carry out the purposes of this act; provided, that such agreements are not in conflict with the provisions of the reclamation or irrigation law now in force in this state; provided further that such authority shall not be exercised by the state water conservation board or the state engineer until after the state of Wyoming has passed a law granting like authority to that herein granted. [L. '37, Ch. 64, § 1. Approved and in effect February 25, 1937.]

CHAPTER 182

TAXATION — DEFINITIONS — TAXABLE VALUE

Section

1996. Definition of terms.

1996. Definition of terms. Whenever the terms mentioned in this section are employed in dealing with the subject of taxation, they are employed in the sense hereafter affixed to them.

First — The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things real, personal, and mixed, capable of private ownership; but this must not be construed so as to authorize the taxation of the stocks of any company or

corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

Second—The term “real estate” includes:

1. The possession of, claim to, ownership of, or right to the possession of land.

2. All mines, minerals, and quarries in and under the land, subject to the provisions of section 2088 of this code, all timber belonging to individuals or corporations growing or being on the lands of the United States, and all right and privileges appertaining thereto.

3. Improvements.

Third—The term “improvements” includes all buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land, whether title has been acquired to said land or not.

Fourth—The term “personal property” includes everything which is the subject of ownership, not included within the meaning of the term “real estate” and “improvements.”

Fifth—The terms “value” and “full cash value” mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

Sixth—The term “credit” means those solvent debts, secured or unsecured, owing to a person. [L. '39, Ch. 90, § 1, amending R. C. M. 1935, § 1996. Approved and in effect March 3, 1939.

Section 2 repeals conflicting laws.

1936.✓ In view of section 2152, taxes cannot be collected by an action instituted for that purpose, nor can the lien thereof be foreclosed. *State ex rel. Tillman v. District Court*, 101 Mont. 176, 53 P. (2d) 107.

1936.✓ Where taxes against real estate are past due and unpaid, the county by which the taxes have been levied may maintain a suit to restrain waste by acts that will reduce the value of the property to an amount insufficient to pay them. *State ex rel. Tillman v. District Court*, 101 Mont. 176, 53 P. (2d) 107.

1996.1. Taxable value, how ascertained.

1939.✓ This section is invalid under constitution article 5, section 25, as not being complete in itself. *Northern Pac. Ry. Co. v. Dunham*, Mont., 90 P. (2d) 506.

CHAPTER 183

PROPERTY SUBJECT TO TAXATION — EXEMPTIONS

1998. Exemptions from taxation.

1939. The legislature can authorize state land not used for governmental purposes, and which is leased to individuals for agricultural use, to be included within special improvement districts, or drainage districts, and authorize assessments to the extent that

the land is benefited. Such assessments are not taxes within the meaning of the constitutional and statutory prohibitions. *State ex rel. Freebourn v. Yellowstone County*, Mont., 88 P. (2d) 6.

1938.✓ Where there was a debatable question, under the statutes of the United States, as to whether the title to funds paid to a guardian of an incompetent veteran by the federal government remained in it, the state legislature had power to enact a law settling the question for this jurisdiction. *Henderson v. City of Missoula*, 106 Mont. 596, 79 P. (2d) 547.

1938.✓ The provision in section 1998 that title to federal funds paid to the guardian of veteran incompetent remains in the United States, and is not subject to taxation until such title passes to the veteran in his own right, is constitutional. *Henderson v. City of Missoula*, 106 Mont. 596, 79 P. (2d) 547.

1938.✓ Under the last provision of this section it was held that real estate purchased by a veteran's guardian with funds paid to the guardian was exempt from taxation after the death of the veteran leaving a minor son. *Henderson v. City of Missoula*, 106 Mont. 596, 79 P. (2d) 547.

1937.✓ Although state lands situated within an irrigation district are subject to assessment for the district, since they are not taxes, within the meaning of Const. Art. 12, § 2, or section 1998 of the code, they may not be sold to satisfy the lien of the assessment. *Toole County Irrigation District v. State*, 104 Mont. 420, 67 P. (2d) 989.

CHAPTER 184

CLASSIFICATION OF PROPERTY FOR TAXATION — BASIS FOR TAXATION

Section

1999. Classification of property for taxation.

2000.4. Deductions in ascertaining value of shares of national bank for taxation—real estate—book value.

1999. Classification of property for taxation.

For the purpose of taxation the taxable property in this state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 2565 of the revised codes of Montana (2090); also where the right to enter upon land to explore or prospect or dig for oil, gas, coal, or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, coal, oil, or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and

domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds, boats and all water craft, harness, saddlery and robes.

Class Three. Livestock, poultry and all agricultural products; stocks of merchandise of all sorts; together with furniture and fixtures used therewith; and all office and hotel furniture and fixtures.

Class Four. All land, town and city lots, with improvements, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana.

Class Five. All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities without any deduction or offset; provided, however, that the terms, moneys and credits as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

Also all poles, lines and other property used and owned by cooperative rural electrical associations organized under the laws of Montana, which rural electrification lines are or have been constructed in whole or in part in cooperation with and from funds furnished by and from the rural electrification authority of the United States.

Class Six. The shares of stock of national banking associations and the moneyed capital employed in conducting a banking business by any other banking corporation, association or individual in this state. Such money capital to be ascertained by deducting from the moneys and credits of such banking corporation, association, or individual, the amount of the deposits and any indebtedness representing money borrowed for use in said business, and the value of the shares of any national banking association, to be ascertained by deducting the value of all real estate of such association.

Class Seven. All property not included in the six preceding classes. [L. '37, Ch. 130, § 1, amending R. C. M. 1935, § 1999. Approved and in effect March 15, 1937.

Section 2 repeals conflicting laws.

1939. It is competent for the legislature, if it sees fit, to provide that taxes for certain purposes may be imposed upon the assessed value of property, rather than the taxable value, notwithstanding the

classification statutes, and this rule applies to maximum levies. *Northern Pac. Ry. Co. v. Dunham*, Mont., 90 P. (2d) 506.

1937. The objection that unlawful discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., a different method is used for enforcing payment of taxes on motor vehicles from that used in cases of other classes of personal property, in that the motor vehicle may not be used on the highways until the tax is paid and license cannot be secured for such operation until the tax is paid, and that if the vehicle is operated without a license the operator has committed a misdemeanor, held untenable, since the collection of taxes in an unusual way on account of the kind of property does not violate the uniformity provision of the constitution, but it is the levy or assessment of the tax which must be uniform, and not the means of enforcement. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. The objection that discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., taxes on motor vehicles are assessable as of January 1st, whereas other personal property is assessed for the purpose of taxation as of noon the first Monday of March, is untenable, since the legislature may fix different dates for assessment of different classes of property, and motor vehicles are in a class different from other personal property. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. The objection that unlawful discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., the amount of taxes on motor vehicles is to be computed and determined on the basis of the levy of the year preceding the current year of application for registration, while taxes for a particular year on all personal property except motor vehicles shall be paid at the rates levied for that year, and that such vehicles in the hands of dealers must pay taxes at the same rate, held untenable, since the law does not provide that the taxes are to be "levied or assessed," but that they are to be "computed and determined" on the basis of the levy of the year preceding. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. The ease with which motor vehicles may be removed from the taxing district as compared with most other personal property is a sufficient reason for special treatment at the hands of the legislature and the difference in the case of the dealer in motor vehicles and that involving individuals likewise justifies the difference in the rate, for the dealer buys a motor vehicle, sells, and purchases another, which he in turn sells; as the capital invested yields several distinct profits during the year, while in the hands of an individual title or no profit may be realized from the investment. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

2000.4. Deductions in ascertaining value of shares of national bank for taxation—real estate—book value. In ascertaining the value of the shares of a national bank for the purpose of taxation there shall be deducted the book value of all real estate of said bank, which shall be assessed to said bank. [L. '39, Ch. 34, § 1, amending R. C. M. 1935, § 2000.4. Approved and in effect February 17, 1939.

CHAPTER 185

ASSESSMENT OF PROPERTY—POWERS, DUTIES, AND LIABILITIES OF ASSESSOR

Section

- 2001.1. Percentage basis and taxable value—determination—duty of assessors.
2001.4. Repealed.
2002. When assessment to be made—credits must be assessed—how—to whom assessed—applicant for registration to pay taxes.

2001.1. Percentage basis and taxable value—determination—duty of assessors. The percentage basis of true and full value as provided for in section 2000, shall be determined and assigned by the county assessors of the various counties of the state of Montana, and the taxable value thereupon computed when they make their annual assessments, and copies of such assessments as provided for in section 2005 shall show the taxpayer the percentage class to which the assessor has assigned his various classes of property for taxation and the taxable valuation thereof. [L. '39, Ch. 100, § 1, amending R. C. M. 1935, § 2001.1. Approved and in effect March 3, 1939.]

Section 2 repeals section 2001.4.

2001.4. Repealed. That section 2001.4 of the revised codes of Montana, 1935, be, and the same is hereby repealed. [L. '39, Ch. 100, § 2. Approved and in effect March 3, 1939.]

2002. When assessment to be made—credits must be assessed—how—to whom assessed—applicant for registration to pay taxes. (1) The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock M. of the first Monday of March next preceding, except that such procedure shall not apply to motor vehicles which shall be assessed at the time fixed in (2) hereof; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid. Credits must be assessed as provided in section 1996, subdivision 6.

(2) The assessor must ascertain and assess all motor vehicles in his county subject to taxation as of January 1st in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession

or control such vehicle was at twelve o'clock M. of the first day of January in each year.

Nothing herein contained shall relieve the applicant for registration or re-registration of any motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid. [L. '37, Ch. 72, § 9, amending R. C. M. 1935, § 2002. Approved March 2, 1937, and in effect December 1, 1937.]

Section 11 is partial invalidity saving clause.

Section 12 repeals conflicting laws.

1938. ✓ Nothing in this act requires an applicant for registration of a motor vehicle to pay, in addition to the taxes for the current year for which application is made, delinquent taxes due upon the vehicle for assessments for prior years, when such delinquent tax is not a lien upon real estate, and in the absence of statute authorizing such a method of collecting taxes the right does not exist. State ex rel. Kleve v. Fischl, 106 Mont. 282, 77 P. (2d) 392.

1938. ✓ This section did not repeal section 2002.1 with regard to the power of the county clerk to value property for assessment and to assess same as explained by annotation under section 2002.1. State ex rel. State Board of Equalization v. Jacobson, 107 Mont. 461, 86 P. (2d) 9.

1937. ✓ Cited in Northern Pacific Ry. Co. v. Lutey, 104 Mont. 321, 66 P. (2d) 785.

1937. ✓ The objection that unlawful discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., a different method is used for enforcing payment of taxes on motor vehicles from that used in cases of other classes of personal property, in that the motor vehicle may not be used on the highways until the tax is paid and license cannot be secured for such operation until the tax is paid, and that if the vehicle is operated without a license the operator has committed a misdemeanor, held untenable, since the collection of taxes in an unusual way on account of the kind of property does not violate the uniformity provision of the constitution, but it is the levy or assessment of the tax which must be uniform, and not the means of enforcement. Wheir v. Dye, 105 Mont. 347, 73 P. (2d) 209.

1937. ✓ The objection that discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., taxes on motor vehicles are assessable as of January 1st, whereas other personal property is assessed for the purpose of taxation as of noon the first Monday of March, is untenable, since the legislature may fix different dates for assessment of different classes of property, and motor vehicles are in a class different from other personal property. Wheir v. Dye, 105 Mont. 347, 73 P. (2d) 209.

1937. ✓ The objection that discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., a new motor vehicle, bought on December 31 is assessable the next day, whereas one purchased on the 2nd day of January following is not taxable until the following year, held untenable,

since no exemption from taxation results, but the tax is simply shifted from one taxpayer to another. *Wheir v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. The objection that unlawful discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., the amount of taxes on motor vehicles is to be computed and determined on the basis of the levy of the year preceding the current year of application for registration, while taxes for a particular year on all personal property except motor vehicles shall be paid at the rates levied for that year, and that such vehicles in the hands of dealers must pay taxes at the same rate, held untenable, since the law does not provide that the taxes are to be "levied or assessed," but that they are to be "computed and determined" on the basis of the levy of the year preceding. *Wheir v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. The objection that unlawful discrimination results from the fact that, under the law concerning registration, licensing, and taxation of motor vehicles, section 1759 et seq., double assessment and taxation is authorized, once while the motor vehicle is in the hands of the dealer and once in the same year while in the hands of the purchaser, was held untenable, because it is the duty of the county treasurer, where there is a double assessment for the same year, to collect only the tax justly due and make return of the facts under affidavit to the county clerk, and if the tax has not been paid by the dealer the obligation of the purchaser to pay it will be adjusted in the purchase price. *Wheir v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1937. Section 2247 was not repealed by L. '37, Ch. 72 amending sections 1759 et seq., so that the provisions in section 2247, relating to adjustments of taxes so that the tax finally paid shall conform to the rate for the current year, applies to taxes on motor vehicles under L. '37, Ch. 72. *Wheir v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

1936. Automobiles that were being transported in interstate commerce to the consignee in Montana on the first Monday in March, and did not reach their destination until three days later, were not taxable in Montana for that year, since property being transported in interstate commerce is beyond the reach of state taxation, even though the owner resides within the state seeking to make a levy. *Ford Motor Co. v. Linnane*, 102 Mont. 325, 57 P. (2d) 803.

2002.1. Assessment of real property and improvements — when and how made.

✓ 1938. Cited in *State ex rel. State Board of Equalization v. Jacobson*, 107 Mont. 461, 86 P. (2d) 9, holding that this section was not impliedly repealed by section 2002, as amended, requiring the assessor to assess each year all property in the county subject to taxation, except such as is required to be assessed by the state board of equalization, since the fixing of the valuation for assessment purposes was one operation, under both statutes, and the assessment of the property for purposes of taxation was another.

✓ 2003. Statement—what to contain.

1936. Cited in *Ford Motor Co. v. Linnane*, 102 Mont. 325, 57 P. (2d) 803.

✓ 2004. Statement to be filled out and returned to assessor.

1936. Cited in *Ford Motor Co. v. Linnane*, 102 Mont. 325, 57 P. (2d) 803.

✓ 2023. Land — how assessed.

1936. Cited in *State ex rel. Tillman v. District Court*, 101 Mont. 176, 53 P. (2d) 107.

2034. Property concealed, misrepresented, etc.

1936. Automobiles that were being transported in interstate commerce to the consignee in Montana on the first Monday in March, and did not reach their destination until three days later, were not taxable in Montana for that year, since property being transported in interstate commerce is beyond the reach of state taxation, even though the owner resides within the state seeking to make a levy. *Ford Motor Co. v. Linnane*, 102 Mont. 325, 57 P. (2d) 803.

✓ 2035. Supplemental assessment.

1936. Automobiles that were being transported in interstate commerce to the consignee in Montana on the first Monday in March, and did not reach their destination until three days later, were not taxable in Montana for that year, since property being transported in interstate commerce is beyond the reach of state taxation, even though the owner resides within the state seeking to make a levy. *Ford Motor Co. v. Linnane*, 102 Mont. 325, 57 P. (2d) 803.

2038. Traveling expenses of assessor and deputies.

✓ 1938. "Earnings" is a more comprehensive term than either "wages" or "salary," and includes allowance of mileage and traveling expenses, of a county assessor in the discharge of his duties, under a statute providing that such earnings shall be exempt from execution or garnishment if acquired within 45 days of service of the writ, whether or not they exceed actual expenses. *Williams v. Sorenson*, 106 Mont. 122, 75 P. (2d) 784.

CHAPTER 186

THE ASSESSMENT-BOOK — STATEMENTS FURNISHED BY ASSESSOR

✓ 2057. List of lands sold by state to be transmitted by state land agent.

1936. Cited in *Ford Motor Co. v. Linnane*, 102 Mont. 325, 57 P. (2d) 803.

CHAPTER 189

TAXATION OF MINES

Section

2090.1. Repealed.

2091.1. Taxation and payment on royalty interests—production of metals and minerals other than oil and gas.

2089. Statement of yield.

✓ 1938. Indians' royalties on oil produced on lands in Blackfeet Indian reservation, held by Indians under trust patent, are not subject to state taxation. *Santa Rita Oil & Gas Co. v. Board of Equalization*, 101 Mont. 268, 54 P. (2d) 117.

1936. ✓ Where, in allotting lands to individual Indians, the trust patents reserved oil and gas for the benefit of the tribe, such lands were subject to the

state gross production tax, operators' net proceeds tax, and royalty owners' net proceeds tax on oil produced from such lands, under federal statute approved Feb. 28, 1891, section 3, 26 Stat. 795, giving state the right to tax oil produced on unallotted Indian lands, for as to the oil rights they were unallotted. *Santa Rita Oil & Gas Co. v. Board of Equalization*, 101 Mont. 268, 54 P. (2d) 117.

1936. ✓ In the absence of congressional consent to the imposition of state taxes, so far as the operators' net proceeds tax is concerned, and also the gross production tax, the state of Montana is without authority to impose these two taxes on the production of oil from Indian lands held under a trust patent. *Santa Rita Oil & Gas Co. v. Board of Equalization*, 101 Mont. 268, 54 P. (2d) 117.

1935. ✓ Payments under "assignment of royalty" held royalties, within the meaning of this statute. *Forbes v. Mid-Northern Oil Co.*, 100 Mont. 10, 45 P. (2d) 673.

1935. ✓ As to right of operator to deduct from royalty, taxes accrued and paid to state under new contract, see *Forbes v. Mid-Northern Oil Co.*, 100 Mont. 10, 45 P. (2d) 673.

2090. Net proceeds—how computed.

1936. In the absence of congressional consent to the imposition of state taxes, so far as the operators' net proceeds tax is concerned, and also the gross production tax, the state of Montana is without authority to impose these two taxes on the production of oil from Indian lands held under a trust patent. *Santa Rita Oil & Gas Co. v. Board of Equalization*, 101 Mont. 268, 54 P. (2d) 117.

1935. Payments under "assignment of royalty" held royalties, within the meaning of this statute. *Forbes v. Mid-Northern Oil Co.*, 100 Mont. 10, 45 P. (2d) 673.

1935. As to right of operator to deduct from royalty, taxes accrued and paid to state under new contract, see *Forbes v. Mid-Northern Oil Co.*, 100 Mont. 10, 45 P. (2d) 673.

2090.1. Repealed. That section 2090.1 of the revised codes of Montana of 1935 be, and the same is hereby repealed. [L. '37, Ch. 49, § 1. Approved and in effect February 23, 1937.

2090.1. Royalty in kind instead of money, computation in case of.

1938. Indians' royalties on oil produced on lands in Blackfeet Indian reservation, held by Indians under trust patent, are not subject to state taxation. *Santa Rita Oil & Gas Co. v. Board of Equalization*, 101 Mont. 268, 54 P. (2d) 117.

2090.3. Assessment of royalties.

1936. ✓ Where, in allotting lands to individual Indians, the trust patents reserved oil and gas for the benefit of the tribe, such lands were subject to the state gross production tax, operators' net proceeds tax, and royalty owners' net proceeds tax on oil produced from such lands, under federal statute approved Feb. 28, 1891, section 3, 26 Stat. 795, giving state the right to tax oil produced on unallotted Indian lands, for as to the oil rights they were unallotted. *Santa Rita Oil & Gas Co. v. Board of Equalization*, 101 Mont. 268, 54 P. (2d) 117.

1936. ✓ In the absence of congressional consent to the imposition of state taxes, so far as the operators' net proceeds tax is concerned, and also the gross

production tax, the state of Montana is without authority to impose these two taxes on the production of oil from Indian lands held under a trust patent. *Santa Rita Oil & Gas Co. v. Board of Equalization*, 101 Mont. 268, 54 P. (2d) 117.

2091. Transmission of net proceeds to county clerk.

1936. ✓ In the absence of congressional consent to the imposition of state taxes, so far as the operators' net proceeds tax is concerned, and also the gross production tax, the state of Montana is without authority to impose these two taxes on the production of oil from Indian lands held under a trust patent. *Santa Rita Oil & Gas Co. v. Board of Equalization*, 101 Mont. 268, 54 P. (2d) 117.

2091.1. Taxation and payment on royalty interests—production of metals and minerals other than oil and gas. At the time of transmitting net proceeds assessments the state board of equalization shall also transmit the royalty lists or schedules to the county clerk of each county in which such mines and mining claims are located and thereupon the county clerk shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before the twentieth day of August following, upon which date said taxes shall be due and payable. Assessments of petroleum and natural gas royalties shall be entered by the county clerk in the personal property assessment book under the name of the producer, and such assessments of royalty when entered shall have all the force and effect as if made in the names of the owners of such royalty individually as well as against the operator. The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law. The operator or producer shall be liable for the payment of said taxes, and same shall be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that after payment of such tax such operator may recover or withhold from any proceeds of royalty interest, either in kind or in money, coming into his hands, the amount of any tax paid by him upon such royalty or royalty interest.

Assessments of royalty on production of metals, and minerals other than petroleum and natural gas, shall be entered by the county clerk in the personal property assessment book in the name of the recipient or owner of such royalty. The county treasurer shall proceed to give full notice thereof to such recipient or royalty owner, and to collect the taxes thereon in the same manner as taxes on net proceeds of mines. [L. '39, Ch. 162, § 1, amending

R. C. M. 1935, § 2091.1. Approved and in effect March 9, 1939.

Section 2 repeals conflicting laws.

1938. ✓ Indians' royalties on oil produced on lands in Blackfeet Indian reservation, held by Indians under trust patent, are not subject to state taxation. Santa Rita Oil & Gas Co. v. Board of Equalization, 101 Mont. 268, 54 P. (2d) 117.

1936. ✓ In the absence of congressional consent to the imposition of state taxes, so far as the operators' net proceeds tax is concerned, and also the gross production tax, the state of Montana is without authority to impose these two taxes on the production of oil from Indian lands held under a trust patent. Santa Rita Oil & Gas Co. v. Board of Equalization, 101 Mont. 268, 54 P. (2d) 117.

1936. ✓ Where, in allotting lands to individual Indians, the trust patents reserved oil and gas for the benefit of the tribe, such lands were subject to the state gross production tax, operators' net proceeds tax, and royalty owners' net proceeds tax on oil produced from such lands, under federal statute approved Feb. 28, 1891, section 3, 26 Stat. 795, giving state the right to tax oil produced on unallotted Indian lands, for as to the oil rights they were unallotted. Santa Rita Oil & Gas Co. v. Board of Equalization, 101 Mont. 268, 54 P. (2d) 117.

2096.1. Statement of persons claiming royalty interests in mines—when made.

1936. Lessor has the duty of paying tax on royalties received under an oil and gas lease, in absence of contract to the contrary. Northern Pac. Ry. Co. v. Gas Development Co., 103 Mont. 214, 62 P. (2d) 204.

1936. Under an oil and gas lease obligating lessee to pay all taxes levied "against" gas or oil produced by him from leased premises, he assumed certain burdens of taxation which the law, as it then existed, imposed upon the lessor, notably the tax upon the real estate, whether held in fee or a mere mineral reservation. A tax on the royalty, which only accrues as a result of the production of oil or gas, is a burden on the production of oil and gas, and, therefore, a tax levied and assessed against the gas and oil produced. It is a burden imposed as a result of the production of oil and gas which would not be existent but for the production of oil and gas. Northern Pac. Ry. Co. v. Gas Development Co., 103 Mont. 214, 62 P. (2d) 204.

1936. Tax on royalty paid to lessor by lessee on natural gas produced on leased property held a part of the net proceeds tax arising out of the operation of mines. Northern Pac. Ry. Co. v. Gas Development Co., 103 Mont. 214, 62 P. (2d) 204.

1935. Proportion of market value of oil produced, payable as royalty to non-resident royalty owner, who had no property interest in the realty, held part of "net proceeds" within Const. Art. 12, § 3. Forbes v. Mid-Northern Oil Co., 100 Mont. 10, 45 P. (2d) 673.

1935. This statute did not impair the obligation of contracts in violation of Const. Art. 3, § 10, where the contract was entered into before the effective date of the statute, since it was exercise of taxing power of state. Forbes v. Mid-Northern Oil Co., 100 Mont. 10, 45 P. (2d) 673.

1935. Payments under "assignment of royalty" held royalties, within the meaning of this statute. Forbes v. Mid-Northern Oil Co., 100 Mont. 10, 45 P. (2d) 673.

1935. As to right of operator to deduct from royalty, taxes accrued and paid to state under new

contract, see Forbes v. Mid-Northern Oil Co., 100 Mont. 10, 45 P. (2d) 673.

2096.2. Assessment of royalty interests—payment of tax.

1936. Tax on royalty paid to lessor by lessee on natural gas produced on leased property held a part of the net proceeds tax arising out of the operation of mines. Northern Pac. Ry. Co. v. Gas Development Co., 103 Mont. 214, 62 P. (2d) 204.

1936. Lessor has the duty of paying tax on royalties received under an oil and gas lease, in absence of contract to the contrary. Northern Pac. Ry. Co. v. Gas Development Co., 103 Mont. 214, 62 P. (2d) 204.

1936. Under an oil and gas lease obligating lessee to pay all taxes levied "against" gas or oil produced by him from leased premises, he assumed certain burdens of taxation which the law, as it then existed, imposed upon the lessor, notably the tax upon the real estate, whether held in fee or a mere mineral reservation. A tax on the royalty, which only accrues as a result of the production of oil or gas, is a burden on the production of oil and gas, and, therefore, a tax levied and assessed against the gas and oil produced. It is a burden imposed as a result of the production of oil and gas which would not be existent but for the production of oil and gas. Northern Pac. Ry. Co. v. Gas Development Co., 103 Mont. 214, 62 P. (2d) 204.

1935. Payments under "assignment of royalty" held royalties, within the meaning of this statute. Forbes v. Mid-Northern Oil Co., 100 Mont. 10, 45 P. (2d) 673.

1935. As to right of operator to deduct from royalty, taxes accrued and paid to state under new contract, see Forbes v. Mid-Northern Oil Co., 100 Mont. 10, 45 P. (2d) 673.

1935. Proportion of market value of oil produced, payable as royalty to non-resident royalty owner, who had no property interest in the realty, held part of "net proceeds" within Const. Art. 12, § 3. Forbes v. Mid-Northern Oil Co., 100 Mont. 10, 45 P. (2d) 673.

1935. This statute did not impair the obligation of contracts in violation of Const. Art. 3, § 10, where the contract was entered into before the effective date of the statute, since it was exercise of taxing power of state. Forbes v. Mid-Northern Oil Co., 100 Mont. 10, 45 P. (2d) 673.

CHAPTER 193

STATE BOARD OF EQUALIZATION

Section

2122.9. Appeal to state board of equalization—from county board—who may appeal—notice—contents—hearing—place—notice—procedure—reference—stenographer.

2122.9. Appeal to state board of equalization—from county board—who may appeal—notice—contents—hearing—place—notice—procedure—reference—stenographer. Any person, firm or corporation or the board in behalf of the state, or any municipal corporation, aggrieved by the action of any county board of equalization, may appeal to the state board by filing with the county board a notice of appeal, and a dupli-

cate thereof with the state board, within ten days after the action of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The state board shall set such appeal for hearing either in its office in the capitol or such county seat as the board shall deem advisable to facilitate the performance of its duties or to accommodate parties in interest, and shall give to the appellant and to the county board at least five days notice of the time and place of such hearing; at the time of giving such notice the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith, and the state board may, in its discretion, determine the appeal on such record or may hear further testimony. For the purpose of expediting its work the state board may refer any such appeal to one of its members, to its secretary, counsel or chief auditor for the conduct of such hearing, and the person so designated shall have and exercise all the powers of the board in conducting such hearings, and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board and the state board shall determine such appeal on the record so made. On all hearings at county seats throughout the state, the state board or the person designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received, and the cost thereof may be paid out of the general appropriation for the board. [L. '39, Ch. 33, § 1, amending R. C. M. 1935, § 2122.9. Approved and in effect February 17, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 194

ASSESSMENT OF RAILROADS BY STATE BOARD OF EQUALIZATION

Section

- 2132. Assessments—how made—railroads—notice — hearing.
- 2133. State board of equalization — transmittal of statement to county assessor—duties of clerk.
- 2135. Repealed.
- 2136. Record of assessment and apportionment of railroads.
- 2137. Repealed.

✓ 2131. Assessment of railroads.

1936. Cited in *Ford Motor Co. v. Linnane*, 102 Mont. 325, 57 P. (2d) 803.

2132. Assessments — how made — railroads — notice — hearing. The state board of equalization must assess the franchise, roadway, roadbed, rails, and rolling-stock of all railroads operated in more than one county; but franchises derived from the United States must not be assessed. All rolling-stock must be assessed in the name of the person, corporation, or association owning, leasing, or using the same. Assessment must be made to the corporation, person, or association of persons owning or leasing or using the same, and must be made upon the entire railroad within the state. The depots, stations, shops and buildings erected upon the space covered by the right-of-way, and all other property owned or leased by such person, corporation, or association, except as above provided, shall be assessed by the assessor of the county wherein they are situate. After making such assessment, the board shall give at least ten (10) days written notice thereof to such owner or operator, designating therein a time and place for hearing thereon, at which time and place such owner or operator, or any taxpayer, may appear before the board in person, or otherwise, to show cause why such assessment should be either lowered or raised. On or before the second Monday in July, the board shall apportion such assessment to the counties, school districts, cities, towns, and other tax subdivision, in which such railroad is located. [L. '39, Ch. 13, § 1, amending R. C. M. 1935, § 2132. Approved and in effect February 9, 1939.]

Section 6 repeals conflicting laws.

2133. State board of equalization — transmittal of statement to county assessor—duties of clerk. The state board of equalization must, within the time mentioned, in the preceding section, transmit by mail to the county assessor of each county, to which such apportionment is made, a statement in detail sufficient for identification and location of the property, showing the assessed value per mile of the same, as fixed by a pro rata distribution per mile of the assessed value of the whole franchise, roadway, roadbed, rails, and rolling-stock of such railroad, within the state, and the amount apportioned to the county and to each taxing subdivision thereof. The county assessor must enter the statement on the assessment roll of the county. [L. '39, Ch. 13, § 2, amending R. C. M. 1935, § 2133. Approved and in effect February 9, 1939.]

Section 6 repeals conflicting laws.

2135. Repealed. That sections 2135 and 2137 of the revised codes of Montana, 1935, be, and the same are hereby repealed. [L. '39, Ch. 13, § 4. Approved and in effect February 9, 1939.]

2136. Record of assessment and apportionment of railroads. The state board of equalization must keep a record of all such assessments and apportionments. [L. '39, Ch. 13, § 3, amending R. C. M. 1935, § 2136. Approved and in effect February 9, 1939.]

Section 6 repeals conflicting laws.

2137. Repealed. [L. '39, Ch. 13, § 4. Approved and in effect February 9, 1939. See § 2135.]

CHAPTER 195

ASSESSMENT OF CERTAIN TELEGRAPH, TELEPHONE, ELECTRIC POWER LINES, AND OTHER PROPERTIES CONTINUING THROUGHOUT MORE THAN ONE COUNTY

Section

2138. Officers of certain telegraph, telephone, electric power, and other lines to furnish statement to state board of equalization—contents—miles owned and operated—value of property—description thereof within state—other information.

2139. Statement to be transmitted by county assessor to state board—contents—description of property.

2140. Repealed.

2141. Hearing before the board—notice.

2142. Hearing for the determination of facts pertaining to assessment.

2143. Assessment of property—apportionment to counties.

2144. Transmission of statement of amount apportioned to counties—duty of county assessor.

2146. Record of assessment and apportionment of properties.

2138. Officers of certain telegraph, telephone, electric power, and other lines to furnish statement to state board of equalization—contents—miles owned and operated—value of property—description thereof within state—other information. The president, secretary, or managing agent, or such other officer as the state board of equalization may designate, of any corporation, and each person or association of persons owning or operating a telegraph, telephone, electric power or transmission line, natural gas pipe line, oil pipe line, canal, ditch, flume, or other property, other than real estate not included in right of way, and which constitute a single and continuous property throughout more than one county, must, on or before the first Monday of March in each year, furnish the state board of equalization a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding, as follows:

1. The whole number of miles of said property in the state, and where the property is partly out of the state, the whole number of miles without the state and the whole number of miles within the state owned or operated by such corporation, person, or association.

2. The total value of the entire property and plant both within and without the state, and the total value of that portion of the same within the state.

3. A complete description of the property within the state, giving the points of entrance into and the points of exit from the state, and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state.

4. Such other information regarding such property as may be required by the state board of equalization. [L. '39, Ch. 17, § 1, amending R. C. M. 1935, § 2138. Approved and in effect February 14, 1939.]

Section 9 repeals conflicting laws.

1936. Cited in *Ford Motor Co. v. Linnane*, 102 Mont. 325, 57 P. (2d) 803.

2139. Statement to be transmitted by county assessor to state board—contents—description of property. The county assessor of every county must, on the first Monday in May of each year, transmit to the state board of equalization a statement showing:

1. The name and address of each corporation, person and association owning or operating any telegraph, telephone, electric power or transmission line, natural gas pipe line, oil pipe line, canal, ditch, flume, or other similar property in more than one county of the state, whose property, or any part thereof, has been assessed by such county assessor.

2. A complete description of all such property assessed to every such corporation, person, or association, together with the assessed value thereof. [L. '39, Ch. 17, § 2, amending R. C. M. 1935, § 2139. Approved and in effect February 14, 1939.]

Section 9 repeals conflicting laws.

2140. Repealed. That section 2140 of the revised codes of Montana, 1935, be, and the same is hereby repealed. [L. '39, Ch. 17, § 8. Approved and in effect February 14, 1939.]

Section 9 repeals conflicting laws.

2141. Hearing before the board—notice. After making such assessment, the board shall give at least ten (10) days written notice thereof to the person or persons to whom the assessment is made, designating a time and place for hearing thereon, at which time and place such person or persons, or any taxpayer may appear before the board in person, or

otherwise, to show cause why such assessment should be either lowered or raised. [L. '39, Ch. 17, § 5, amending R. C. M. 1935, § 2141. Approved and in effect February 14, 1939.

Section 9 repeals conflicting laws.

2142. Hearing for the determination of facts pertaining to assessment. If any corporation, person or association shall fail, neglect, or refuse to furnish the state board of equalization with a full, true, and correct statement as required, and within the time, by section 2138 of this code, or if the board shall have reason to believe that any such statement furnished the board is incorrect or erroneous in any particular, the board shall order a hearing for the purpose of ascertaining and determining such facts as will enable the board to assess the property of such corporation, person or association in accordance with the provisions of section 2143 of this code. At least ten days' written notice of such hearing shall be given to such corporation, person, or association, and on such hearing the board shall ascertain and determine each and all of the matters and facts which should have been stated in such statement. [L. '39, Ch. 17, § 3, amending R. C. M. 1935, § 2142. Approved and in effect February 14, 1939.

Section 9 repeals conflicting laws.

2143. Assessment of property — apportionment to counties. The board must assess all the properties described in section 2138 of the code, but franchises granted by the United States must not be assessed, the value of such properties for assessment purposes to be determined upon such factors as the board shall deem proper.

On or before the second Monday in July, the board shall apportion such assessment to the counties in which the properties are situated. [L. '39, Ch. 17, § 4, amending R. C. M. 1935, § 2143. Approved and in effect February 14, 1939.

Section 9 repeals conflicting laws.

2144. Transmission of statement of amount apportioned to counties — duty of county assessor. The state board of equalization, must, not later than the second Monday of July, transmit or mail to the county assessor of each county to which such apportionment has been made, a statement showing the length of the property in such county; a description of the same sufficient for identification; the assessed value of the same as determined by the board; and the amount apportioned to the county. The county assessor must enter the statement on the assessment-roll or book of the county, and enter the amount of the assessment apportioned to the

county in the column of the assessment-roll or book which shows the total value of all property for taxation in the county. [L. '39, Ch. 17, § 6, amending R. C. M. 1935, § 2144. Approved and in effect February 14, 1939.

Section 9 repeals conflicting laws.

2146. Record of assessment and apportionment of properties. The state board of equalization must keep a record of all such assessments and apportionments. [L. '39, Ch. 17, § 7, amending R. C. M. 1935, § 2146. Approved and in effect February 14, 1939.

Section 9 repeals conflicting laws.

CHAPTER 196

LEVY OF TAXES

Section

2147.1. Tax levies for 1937.

2147.2. Tax levies for 1938.

2147.3. Tax levies for 1939.

2147.4. Tax levies for 1940.

2153. Tax on personal property lien on realty—separate assessment—preferences—mortgage or other lien—severance—payment of part of debt—effect as part discharge—procedure by lienor—notice—effect—past due lien.

2155a. Tax for state educational and other purposes—referendum measure.

2155b. Same—referendum date—ballots—form—how voted.

2155c. Same—vote—how canvassed—majority required—proclamation.

2147.1. Tax levies for 1937. The following tax levies for state purposes are hereby made upon all property in the state of Montana subject to taxation for the year 1937, as ascertained by taking the percentage of the true and full value provided by law for purposes of taxation, to-wit:

A. For the state general fund, including the levy for the issue of \$4,500,000.00 state funding bonds authorized by chapter 10 of the session laws of the twenty-third legislative assembly of 1933, two (2) mills.

B. For the university millage fund, two and one-half (2½) mills.

C. For the state educational bond sinking and interest fund created under initiative measure 19 now comprising sections 5606 to 5612 inclusive of the revised codes of Montana of 1921, ten-twelfths (10/12) of a mill on each dollar of the assessed valuation of said property. [L. '37, Ch. 125, § 1. Approved and in effect March 15, 1937.

2147.2. Tax levies for 1938. The following tax levies for state purposes are hereby made upon all property in the state of Montana subject to taxation for the year 1938, as

ascertained by taking the percentage of the true and full value provided by law for purposes of taxation, to-wit:

A. For the state general fund, including the levy for the issue of \$4,500,000.00 state funding bonds authorized by chapter 10 of the session laws of the twenty-third legislative assembly of 1933, two (2) mills.

B. For the university millage fund, two and one-half (2½) mills.

C. For the state educational bond sinking and interest fund created under initiative measure 19 now comprising sections 5606 to 5612 inclusive of the revised codes of Montana of 1921, ten-twelfths (10/12) of a mill on each dollar of the assessed valuation of said property. [L. '37, Ch. 125, § 2. Approved and in effect March 15, 1937.

Section 3 is partial invalidity saving clause.

2147.3. Tax levies for 1939. The following tax levies for state purposes are hereby made upon all property in the state of Montana subject to taxation for the year 1939, as ascertained by taking the percentage of true and full value provided by law for purposes of taxation, to-wit:

A. For the state general fund, including the levy for the issue of four million, five hundred thousand dollars (\$4,500,000.00), state funding bonds authorized by chapter 10 of the session laws of the twenty-third legislative assembly of 1933, two (2) mills.

B. For the university millage fund, three (3) mills. [L. '39, Ch. 171, § 1. Approved and in effect March 15, 1939.

2147.4. Tax levies for 1940. The following tax levies for state purposes are hereby made upon all property in the state of Montana subject to taxation for the year 1940, as ascertained by taking the percentage of the true and full value provided by law for purposes of taxation, to-wit:

A. For the state general fund, including the levy for the issue of four million, five hundred thousand dollars (\$4,500,000.00), state funding bonds authorized by chapter 10 of the session laws of the twenty-third legislative assembly of 1933, two (2) mills.

B. For the university millage fund, three (3) mills. [L. '39, Ch. 171, § 2. Approved and in effect March 15, 1939.

Section 3 is partial invalidity saving clause.

2152. Tax operates as a judgment or lien.

1938. Cited in *Calkins v. Smith*, 106 Mont. 453, 78 P. (2d) 74, holding the personal obligation created by the levy of taxes is not a continuing personal obligation. The obligation to pay them is satisfied and terminated when the lien is foreclosed and the sale of the property made.

1936. In view of section 2152, taxes cannot be collected by an action instituted for that purpose, nor can the lien thereof be foreclosed. State ex rel. Tillman v. District Court, 101 Mont. 176, 53 P. (2d) 107.

1936. Where taxes against real estate are past due and unpaid, the county by which the taxes have been levied may maintain a suit to restrain waste by acts that will reduce the value of the property to an amount insufficient to pay them. State ex rel. Tillman v. District Court, 101 Mont. 176, 53 P. (2d) 107.

2153. Tax on personal property lien on realty — separate assessment — preferences — mortgage or other lien — severance — payment of part of debt — effect as part discharge — procedure by lienor — notice — effect — past due lien. (a). Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof, from and after 12 M. of the first Monday in March in each year.

(b). The taxes upon personal property based upon a taxable value up to and including one thousand dollars (\$1000.00) shall be a first and prior lien upon the real property of the owner of such personal property; taxes upon personal property based upon the taxable value thereof in excess of one thousand dollars (\$1000.00) shall be a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon said real property appearing of record in the office of the clerk and ex officio recorder of the county where such real property is situated at or before the time such personal property tax attached thereto shall have filed the notice hereinafter provided for, in which event the taxes upon such excess of one thousand dollars (\$1000.00), of taxable value shall not be a lien on the real property of such owner. It shall be the duty of the county treasurer to issue to any mortgagee or lien holder, upon his request, a statement of the personal property tax due upon the taxable value up to and including one thousand dollars (\$1000.00); and personal property taxes upon a taxable value up to one thousand dollars (\$1000.00) may be paid, redeemed from a tax sale as by law provided, or discharged separate from any personal property taxes in excess of such amount. Payment of such taxes upon a taxable value up to one thousand dollars (\$1000.00) as herein provided, shall operate to discharge the tax lien upon the personal property of the owner to the extent of such payment in the order that the person paying such tax shall direct.

(c). The holder of any mortgage or lien upon real property who desires to obtain the

benefits of this section shall file in the office of the county assessor and in the office of the county treasurer of said county a notice giving;

(1) the name and address of the mortgagee and holder of the mortgage or lien;

(2) the name of the reputed owner of the land;

(3) the description of the land;

(4) the date of record and expiration of the mortgage or lien;

(5) the amount thereof; and

(6) a statement that he claims the benefit of the provisions of this section; and such notice shall be ineffectual as to any taxes which shall have become a lien on real property prior to the filing of such notice as aforesaid. If the mortgage be not paid at maturity, such notice shall thereafter be filed annually, unless the mortgage be extended for a definite period to be stated in such notice.

(d). Provided, that any owner of a mortgage on real estate upon which personal property taxes are by this act made a lien, and where the owner of such real estate and personal property has failed to pay taxes due upon such real estate and personal property for one or more years, may file with the county assessor of the county in which such property is located a written [written] request to have the personal property and real estate of the owner separately assessed. Such request must be made by registered mail at least ten (10) days prior to the first Monday in March in the year for which property is assessed. Upon receipt by the assessor of such request, it is hereby made the duty of the county assessor to make a separate assessment of real and personal property of the owner thereof and such personal taxes shall not be a lien upon the real estate so mortgaged of the owner thereof and the said personal property taxes shall be collected in the manner provided by law for other personal property. [L. '37. Ch. 97, § 1, amending R. C. M. 1935, § 2153. Approved and in effect March 12, 1937.

Section 2 repeals conflicting laws.

1938. ✓ Section 1759 et seq. does not require a dealer to pay his tax on all of his cars in stock on January 1st, before he can sell any of them; nor that the purchaser of one of such cars shall pay the entire automobile tax of the dealer covering other cars before he is permitted to register and obtain his license plates for the one. The statute treats cars, not held in stock, but for "use" each as a separate unit and tax may be paid on one without paying the tax on the others, State ex rel. Sadler v. Evans, 106 Mont. 286, 77 P. (2d) 394, nor does section 2153, making a personal property tax a prior lien upon "any or all of such property," alter the case.

2154. Tax upon real property and tax on improvements a lien upon both.

1938. ✓ Cited in Calkins v. Smith, 106 Mont. 453, 78 P. (2d) 74.

1936. ✓ Cited in State ex rel. Tillman v. District Court, 101 Mont. 176, 53 P. (2d) 107.

2155a. Tax for state educational and other purposes — referendum measure. That the rate of taxation on real and personal property for state purposes, as is hereafter defined, for each year for a period of ten (10) years beginning with the year 1941, shall be increased three and one-half (3½) mills on each dollar of taxable valuation, in addition to the levy which is now or may hereafter be authorized by section 9 of article 12 of the constitution of the state of Montana, and the legislative assembly is authorized and empowered to levy an additional tax for state purposes for each of said years of not exceeding three and one-half (3½) mills on each dollar of taxable valuation for state purposes, and all money derived from said additional levy of three and one-half (3½) mills for each of said years or so much thereof as may be necessary shall be appropriated by the legislative assembly for the support, maintenance and improvement of the state university at Missoula, the state college of agriculture and mechanic arts at Bozeman, the Montana state school of mines at Butte, the Montana state normal college at Dillon, the eastern Montana state normal school at Billings, and the northern Montana agricultural and manual training school at Fort Assiniboine, now comprised in the university of Montana, together with the agricultural experiment station and its branches and sub-stations, and the agricultural extension service, including the soil survey and the grain laboratory. [L. '39, Ch. 143, § 1. Act submitting referendum approved and in effect March 11, 1939.

2155b. Same — referendum date — ballots — form — how voted. There shall be a referendum upon this act, and the secretary of state of the state of Montana is hereby required and it is made his duty to submit this act to the people of the state of Montana for their approval or rejection at the general election to be held in November, 1940, in accordance with the provisions of the constitution and the laws of the state of Montana relative thereto; the title and number of this referendum act shall be printed upon the official ballot used at said election, and below the title shall be printed the words:

☐ For the levy for the university, agricultural experiment stations and extension service.

☐ Against the levy for the university, agricultural experiment stations and extension service.

Each elector shall designate his preference by marking an "X" in the square before the proposition for which such elector desires to vote. [L. '39, Ch. 143, § 2. Act submitting referendum approved and in effect March 11, 1939.

2155c. Same — vote — how canvassed — majority required — proclamation. The vote upon this referendum act shall be counted and canvassed as is provided by law and if a majority of all votes cast at such election for and against such referendum act shall be in favor of the act, the governor of the state of Montana shall immediately so declare by public proclamation. [L. '39, Ch. 143, § 3. Act submitting referendum approved and in effect March 11, 1939.

Section 4 repeals conflicting laws.

CHAPTER 198

DUTIES OF COUNTY CLERK IN RELATION TO TAXES

2159. To follow directions of state board of equalization.

1938. Cited, as to the duty of the county clerk to make changes in the assessment books on receiving from the state board of equalization a statement of changes made by them, in *State ex rel. State Board of Equalization v. Jacobson*, 107 Mont. 461, 86 P. (2d) 9.

CHAPTER 199

COLLECTION OF PROPERTY TAXES — TAX SALES — SALE OF TAX DEED LANDS — REDEMPTION — PROCUR- ING TAX DEEDS

Section

- 2182. Publication of notice to tax sales—contents of notice.
- 2196. Book entries of land sold—data required—duty of treasurer—data on certificate—entry of tax payment subsequent to prior tax sale certificate—public inspection of book.
- 2207. Assignment of rights of county in property acquired at sale—form of certificate.
- 2208.1. Sale of tax lands—terms—taxation of lands sold—lease of lands—exchange of lands and land use policies.
- 2208.1a. Contracts for purchase of tax deed lands—delinquent taxes—cancellation of contract — reissue — conditions — interest and penalties.
- 2208.1b. County commissioners—powers and duties.
- 2208.1c. Land sold by county since cancellation of contract.
- 2208.1d. Expiry of act.

Section

- 2208.1e. Repeals.
- 2210. Redemption from tax sales.
- 2214.2. Validation of tax deeds.
- 2215.2. Action—parties—county as applicant—complant—contents—several tracts of land—defendants—who may be joined as—pending or future actions—applicability of procedure.
- 2215.9. Effect of deed.
- 2222. Taxes, etc., illegally collected to be refunded—claim for refund—time of filing —payment from general fund.
- 2222.1. Repeals—construction of act—conflicts.
- 2231. Assessment of property on which a tax sale certificate has been purchased by county—resale for unpaid subsequent taxes—when tax deed issued—right of redemption.
- 2233.1. Redemption of land sold to county—time—payment of tax only—when act inapplicable.
- 2232.2. Notice of act — publication — mailing — officers' duty.
- 2233.3. No assignments of tax sales during life of act.
- 2233.4. Partial invalidity saving clause—declaration of emergency.
- 2233.5. Other acts—stay of operation.
- 2233.6. Redemption of property sold to county for taxes—extension of time—waiver of penalties—powers of county commissioners as to tax deeds.
- 2233.7. Partial invalidity of act—emergency.
- 2235. Sale of unredeemed property by county commissioners — notice — publication — sale—terms—exchange for bonds—county treasurer — duties — deed — issuance by chairman of county commissioners' board—sales and deeds—validation—proceeds of sale—disposition—apportionment —proration.

2169. Treasurer to publish notice of delinquency.

1938. The provisions of this section are mandatory and exclusive. *Calkins v. Smith*, 106 Mont. 453, 78 P. (2d) 74.

1936. Cancellation of tax sale certificate issued to county is not warranted by failure of treasurer to include in notice of taxes due, delinquent taxes of prior years. *Smith v. Blaine County*, 102 Mont. 116, 56 P. (2d) 177.

2171. Treasurer to note date and amount of payment.

1938. United States government issued patents to Indians without their consent and taxes were assessed thereon by the county. Taxes and penalties were paid by some of the Indians prior to the cancellation of the patents by the United States. In a suit to quiet title to these properties and recover taxes and penalties it was held that the taxes could be recovered but not the interest and penalties. *Glacier County, Montana, et al. v. United States*, 99 Fed. (2d) 733.

2182. Publication of notice to tax sales — contents of notice. On or before the last Monday of June of each year, the county treasurer must publish in the manner and for

the time prescribed in sections 2184, 2185 and 2186, a notice specifying:

1. That at a given time and place (to be designated in the notice) all property in the county, upon which delinquent taxes are a lien, will be sold at public auction, unless prior to said time, said delinquent taxes, together with all interest, penalties and costs due thereon are paid;

2. A complete delinquent list of all persons and property in the county, now owing taxes, including all city and town property, as to which taxes, or taxes and assessments, are delinquent, is on file in the office of the county treasurer and is subject to public inspection and examination. [L. '39, Ch. 26, § 1, amending R. C. M. 1935, § 2182. Approved and in effect February 15, 1939.]

Section 2 repeals conflicting laws.

1938. ✓ Cited in *Calkins v. Smith*, 106 Mont. 453, 78 P. (2d) 74.

1938. ✓ United States government issued patents to Indians without their consent and taxes were assessed thereon by the county. Taxes and penalties were paid by some of the Indians prior to the cancellation of the patents by the United States. In a suit to quiet title to these properties and recover taxes and penalties it was held that the taxes could be recovered but not the interest and penalties. *Glacier County, Montana, et al. v. United States*, 99 Fed. (2d) 733.

2186. Time and place of sale.

1938. ✓ United States government issued patents to Indians without their consent and taxes were assessed thereon by the county. Taxes and penalties were paid by some of the Indians prior to the cancellation of the patents by the United States. In a suit to quiet title to these properties and recover taxes and penalties it was held that the taxes could be recovered but not the interest and penalties. *Glacier County, Montana, et al. v. United States*, 99 Fed. (2d) 733.

2189. Manner of conducting sale.

1936. ✓ In order to vest the treasurer with jurisdiction to sell real estate for delinquent taxes, there must be a valid assessment, a valid levy, and non-payment of the tax so duly levied and assessed. These jurisdictional requirements appearing, the requirement to sell is mandatory. *Martin v. Glacier County*, 102 Mont. 213, 56 P. (2d) 742.

2191. Designation of portion to be sold — sale to county — assignment of county's interest — validation of certificates.

1938. ✓ United States government issued patents to Indians without their consent and taxes were assessed thereon by the county. Taxes and penalties were paid by some of the Indians prior to the cancellation of the patents by the United States. In a suit to quiet title to these properties and recover taxes and penalties it was held that the taxes could be recovered but not the interest and penalties. *Glacier County, Montana, et al. v. United States*, 99 Fed. (2d) 733.

1936. ✓ Title of L. '29, Ch. 31, § 2191, held to express the subject of the statute sufficiently to comply with

the requirements of Const. Art. 5, § 23. *Martin v. Glacier County*, 102 Mont. 213, 56 P. (2d) 742.

1936. Deeds void on their face for jurisdictional defects are not deeds but nullities, and as to these, curative acts are unavailing, and they may be attacked at any time. *Martin v. Glacier County*, 102 Mont. 213, 56 P. (2d) 742.

1936. ✓ For irregularities in tax deeds held cured by statute, see *Martin v. Glacier County*, 102 Mont. 213, 56 P. (2d) 742.

1936. ✓ Mistake of one day in recital of the day the property was sold, held to be rendered immaterial by the curative act. *Martin v. Glacier County*, 102 Mont. 213, 56 P. (2d) 742.

2196. Book entries of land sold — data required — duty of treasurer — data on certificate — entry of tax payment subsequent to prior tax sale certificate — public inspection of book. The county treasurer, before delivering any certificate, must in a book enter a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, and the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate.

If taxes are paid subsequent to prior tax sale certificate, before such taxes become delinquent, by anyone other than the record owner of the land or to whom the land was assessed, the county treasurer shall make an entry in such book, opposite the name of such record owner of the land, or to whom the land was assessed, the date of such payment, the name of the person making such payment, and the amount paid. Such book must be open to public inspection without fee during office hours when not in actual use. [L. '39, Ch. 191, § 1, amending R. C. M. 1935, § 2196. Approved and in effect March 17, 1939.]

Section 2 repeals conflicting laws.

2201. Time for redemption — increase of time.

1938. ✓ United States government issued patents to Indians without their consent and taxes were assessed thereon by the county. Taxes and penalties were paid by some of the Indians prior to the cancellation of the patents by the United States. In a suit to quiet title to these properties and recover taxes and penalties it was held that the taxes could be recovered but not the interest and penalties. *Glacier County, Montana, et al. v. United States*, 99 Fed. (2d) 733.

2207. Assignment of rights of county in property acquired at sale — form of certificate.

At any time after any parcel of land has been bid in by the county as the purchaser thereof for taxes, as provided in section 2191, the same not having been redeemed, the county treasurer shall assign all the right of the county therein, acquired at such sale, to any person who shall pay the amount for which the same was bid in, with interest upon the

original tax at the rate of two-thirds ($\frac{2}{3}$) of one per cent per month, and the amount of all subsequent delinquent taxes, penalties, costs, and interest, as provided by law, upon the same from time to time when such tax became delinquent. He shall execute to such person a certificate for such parcel, which may be substantially in the following form:

I, _____, the treasurer of the county of _____, State of Montana, do hereby certify that at the sale of lands pursuant to the tax assessment for the year 19____, in the county of _____, and which sale was held on the _____ day of _____ 19____, for the purpose of liquidating said assessment, the following described parcel of land, situate in said county of _____, State of Montana, to-wit, (insert description) was duly offered for sale; that there was no purchaser in good faith for the same as provided by law on the first day the property was offered for sale; and thereafter, on the _____ day of _____, 19____, I again offered said property for sale at the place advertised for such sale, and no person or purchaser offered to take the same and pay the taxes, cost, and charges due as aforesaid, the whole amount of the property assessed and described as above was struck off to the county of _____ as purchaser thereof for the sum of _____, and the same still remaining unredeemed, and on this day _____ having paid into the treasury of said county the amount for which the same was bid in, together with all subsequent delinquent taxes, penalties, cost, and interest, amounting in all to _____ dollars;

Now, therefore, in consideration thereof, and pursuant to the statute in such case made and provided, I do hereby assign and set over all the right, title and interest of the county of _____, State of Montana, acquired in said lands under and by virtue of said sale, to the said _____, his heirs and assigns, forever, together with all the rights, powers, and privileges of the said county of _____ to take steps to receive a deed thereof, or receive payment in case of a redemption, subject, however, to redemption as provided by law.

Witness my hand and official seal of office this _____ day of _____, 19____.

County Treasurer.

Provided, that in case the certificate herein above described shall by accident become lost or destroyed by the assignee, then in such an event the county treasurer shall issue a duplicate certificate to the assignee after the said county treasurer is convinced that the said certificate has been lost or destroyed and after

the said assignee has made an affidavit to that effect. [L. '39, Ch. 24, § 1, amending R. C. M. 1935, § 2207, as amended by L. '37, Ch. 101, § 1. Approved and in effect February 15, 1939.]

Section 2 repeals conflicting laws.

1938. ✓ Cited in *Calkins v. Smith*, 106 Mont. 453, 78 P. (2d) 74.

1937. ✓ While an assignee of a tax sale certificate usually acquires all the rights of the county on purchase by it at a tax sale, since the county acquires nothing by such purchase where state land has reverted to the state through cancellation of the certificate of purchase from it, because of default of payments by the purchaser of the land, its assignee acquires nothing. *Christofferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

2208.1. Sale of tax lands — terms — taxation of lands sold — lease of lands — exchange of lands and land use policies. Whenever the county shall acquire any land by tax deed, it shall be the duty of the board of county commissioners, within six months after acquiring title, to make and enter an order for the sale of such lands at public auction at the front door of the courthouse, provided, however, that notice of such sale shall be given by publication in a newspaper printed in the county, such notice to be published once a week for three successive weeks, and by posting notice of such sale in at least three public places in the county. Notice posted and published shall be signed by the county clerk and one notice may include a list of all lands to be offered for sale at one time. It shall describe the lands to be sold, the appraised value of same and the time and place of sale, and no sale shall be made for a price less than the fair market value thereof, as determined and fixed by the board of county commissioners prior to making the order of sale, which value shall be stated in the notice of sale.

In the event any of said lands are not sold at such public sale, the county commissioners may at any time either again appraise, advertise and offer the same at public auction or sell the same at private sale at the best price obtainable, but at not less than ninety per cent of the last appraised value, and on such terms as may be agreed upon, provided the rate of interest on deferred payments shall not exceed four per cent per annum, and provided further that the terms other than price, as to each class of land, grazing, farming and irrigated, shall be uniform in each county.

If a sale is made on terms, the chairman of the board of county commissioners shall execute a contract in behalf of the county, and upon the payment of the full purchase price, together with all interest and taxes, the chair-

man of the board of county commissioners shall execute a deed to the purchaser, or his assignee conveying the title of the county in and to the lands so sold.

On the first Monday in March following the execution of such contract, the lands shall be subject to taxation in the name of the purchaser, or his assignee, and in the event the taxes are not paid, and the same become delinquent, said contract shall stand cancelled and all payments theretofore made shall be taken, treated and regarded as rent for said property.

Whenever any of such lands have been offered for sale at public auction and not sold, the county commissioners may, if deemed for the best interest of the county, lease said lands upon the best terms obtainable, provided that such lease, when for farming lands, shall not extend over a period of three years; for grazing lands, it shall not extend over a period longer than five years, except of lands to be within a legally created or thereafter to be created grazing district, when such lease may run for a period of not to exceed ten years, provided lands leased for grazing purposes may be subject to sale, at the discretion of the board of county commissioners, during the term of the lease, and leases shall be subject to all rules and regulations relative to land use policies or regulations to best advance public benefit and welfare that may be adopted by the board of county commissioners, with the advice of the county agricultural planning committee, and further provided that the lease rentals may vary according to the carrying capacity of the lands leased as determined by the board of county commissioners.

The county commissioners may also, after any of said lands have been offered for sale and not sold, when it is deemed for the best interests of the county, exchange said lands for other lands of equal value where the effect of such exchange would be to acquire land which could be leased or sold to better advantage. [L. '39, Ch. 193, § 1, amending R. C. M. 1935, § 2208.1. Approved and in effect March 17, 1939.]

2208.1a. Contracts for purchase of tax deed lands — delinquent taxes — cancellation of contract — reissue — conditions — interest and penalties. All persons who hold or have held a contract with a county for the purchase of tax deed lands who have paid the taxes thereon up to and including the year 1935, and who, prior to January 1, 1937, had their contracts cancelled or which contracts are subject to cancellation because of non-payment of taxes under section 2208.1 of the revised codes of Montana, 1935, shall be entitled, upon application to the county com-

missioners, and upon payment of all delinquent taxes, to have their contract reissued, subject to the following condition:

The purchaser shall not be charged with any delinquent interest or any penalties which may have accrued under the original contract. [L. '37, Ch. 119, § 1. Approved and in effect March 15, 1937.]

2208.1b. County commissioners — powers and duties. The county commissioners are hereby empowered and directed to reissue such contract in accordance with the provisions of this act. [L. '37, Ch. 119, § 2. Approved and in effect March 15, 1937.]

2208.1c. Land sold by county since cancellation of contract. This act shall not apply in cases where any such land has been sold by the county since the cancellation of such contract. [L. '37, Ch. 119, § 3. Approved and in effect March 15, 1937.]

2208.1d. Expiry of act. This act shall remain in effect only until the 31st day of December, 1938. [L. '37, Ch. 119, § 4. Approved and in effect March 15, 1937.]

2208.1e. Repeals. All acts and part of acts in conflict herewith are hereby repealed, including only so much of chapter 152 of the laws of 1937 as is in direct conflict herewith. [L. '39, Ch. 193, § 2. Approved and in effect March 17, 1939.]

2210. Redemption from tax sales. In all cases where real estate has been sold for delinquent taxes the purchaser at such tax sale, or his assignee, may, subsequent thereto, pay the subsequent taxes assessed against said land, and upon the redemption of said land from such tax sale, the redemptioner shall, in addition to the amount for which the said land was sold, with interest thereon, pay the subsequent taxes paid by the purchaser at such tax sale, or his assignee, with interest thereon at the rate of eight per cent per annum from the date of the payment of such taxes, and in all notices of application for tax deed the applicant shall state, in addition to the amount paid at the tax sale, the amount of subsequent taxes paid by the applicant or his assignee upon such land, with interest thereon at the rate of eight per cent per annum from the date of such payment, and no redemption shall be made until the amount of such sale, with interest, and such subsequent taxes and interest shall have been paid by the person seeking to redeem such lands. [L. '39, Ch. 25, § 1, amending R. C. M. 1935, § 2210. Approved and in effect February 15, 1939.]

Section 2 repeals conflicting laws.

1938. ✓ United States government issued patents to Indians without their consent and taxes were assessed thereon by the county. Taxes and penalties were paid by some of the Indians prior to the cancellation of the patents by the United States. In a suit to quiet title to these properties and recover taxes and penalties it was held that the taxes could be recovered but not the interest and penalties. *Glacier County, Montana, et al. v. United States*, 99 Fed. (2d) 733.

2211. Redemption from tax sale—piece-meal redemption.

1938. ✓ Cited in *Calkins v. Smith*, 106 Mont. 453, 78 P. (2d) 74.

2214. Of what deed is evidence—actions concerning.

1939. ✓ In action by county to quiet title to city lot acquired by it under tax deed proceedings the claim by city that title was subject to payment of improvement district assessments held not a collateral attack upon deed, as question raised was as to interpretation to be given to deed. *Cascade County v. Weaver*, Mont., 90 P. (2d) 164.

1939. ✓ City asserting lien on portion of lot acquired by county under tax deed proceedings held not required to deposit amount of taxes, interest, and penalties in court in action by county to quiet title to lot. *Cascade County v. Weaver*, Mont., 90 P. (2d) 164.

1939. ✓ The deposit required by this section is in the nature of security. *Cascade County v. Weaver*, Mont., 90 P. (2d) 164.

1937. ✓ The defendant in an action to quiet title to land acquired by tax proceedings cannot attack the validity of the proceedings where he does not pay into court the money required by this section, including taxes, even though the latter have not been levied. *Smith v. Whitney*, 105 Mont. 523, 74 P. (2d) 450.

1936. ✓ In an action to quiet title as against the purchaser at a tax sale, application for a writ of supervisory control was proper where the court refused to hear the question of the validity of the tax, for non-payment of which the land was sold, before requiring deposit of the tax, since remedy by appeal after deposit would have been inadequate, because the statute made no provision for the return to the plaintiff of the money so paid in case the tax was illegal. *State ex rel. Jensen v. District Court*, 103 Mont. 461, 64 P. (2d) 835.

1936. ✓ An unverified motion to quash an order to show why the plaintiff, in an action to quiet title against the purchaser of land at a tax sale, on account of the alleged illegality of the tax levy, should not pay the assessed tax into court before the hearing of the action, was held improperly disregarded because of lack of such verification, since verification of a pleading is unnecessary to give jurisdiction to the court, as it is no part of a pleading, and, in any event, is waived by failure to object, and, if required, can be added by amendment. *State ex rel. Jensen v. District Court*, 103 Mont. 461, 64 P. (2d) 835.

1936. ✓ Since section 2214 makes no provision for the filing of any pleading in response to an order to show cause, the practice provided for in injunction cases would seem to be proper, section 9247, and in response to an order to show cause why the plaintiff should not pay into court taxes levied on land sold for taxes before being entitled to maintain an action to quiet title against a purchaser at a tax

sale, on ground of illegality of the levy, such plaintiff may show cause either by an appropriate sworn pleading, or by oral testimony, and any affidavit sufficient as a defense is sufficient to show cause. *State ex rel. Jensen v. District Court*, 103 Mont. 461, 64 P. (2d) 835.

2214.2. Validation of tax deeds. That any tax deed heretofore issued in this state shall not be held invalid by reason of any defect in the form, substance or amounts stated to be due in the notice of application for tax deed, or in failure to give the full sixty (60) day notice required by section 2209 of the revised codes of Montana, 1935, provided, however, at least thirty (30) days notice of the time when the deed was applied for was given, and all tax deeds heretofore issued are legalized and declared to be valid and legal regardless of any error, defect, omission, irregularity or failure to correctly state the amount due in the notice of application for tax deed. [L. '39, Ch. 105, § 1, amending R. C. M. 1935, § 2214.2, as amended by L. '37, Ch. 132, § 1, as amended by L. '39, Ch. 94, § 1. Approved and in effect March 3, 1939.

Section 2 repeals conflicting laws.

1936. ✓ Deeds void on their face for jurisdictional defects are not deeds but nullities, and, as to these, curative acts are unavailing, and they may be attacked at any time. *Martin v. Glacier County*, 102 Mont. 213, 56 P. (2d) 742.

1936. ✓ For irregularities in tax deeds held cured by statute, see *Martin v. Glacier County*, 102 Mont. 213, 56 P. (2d) 742.

2215. Title conveyed by deed—procedure to cure defects.

1939. ✓ It was the legislative intent, in enacting section 2215.9, to amend section 2215 and to limit the title conveyed by tax deed, under any method provided by the statutes, so as to preserve the lien of special assessments payable after the execution of the deed. *Cascade County v. Weaver*, Mont., 90 P. (2d) 164.

1939. ✓ In action by county to quiet title to city lot acquired by it under tax deed proceedings the claim by city that title was subject to payment of improvement district assessments held not a collateral attack upon deed, as question raised was as to interpretation to be given to deed. *Cascade County v. Weaver*, Mont., 90 P. (2d) 164.

1937. ✓ A negative easement created by deed covenant that no liquor shall ever be sold on the premises is not obliterated by sale of the land for taxes. *Northwestern Improvement Co. v. Lowry*, 104 Mont. 289, 66 P. (2d) 792.

1937. ✓ A tax deed under this section creates a new title in the nature of an independent grant from the sovereignty, extinguishing all former titles and liens not expressly exempted from its operation. *Northwestern Improvement Co. v. Lowry*, 104 Mont. 289, 66 P. (2d) 792.

2215.1. Action to procure tax deed—taxes to be paid.

1939. Under the laws of Montana the holder of a tax sale certificate can use an informal method of procedure to get a tax deed or can take the more

formal method of bringing an action in the district court under this and subsequent sections, but in case of state land the authority must be plain and cannot be implied. State ex rel. Freebourn v. Yellowstone County, Mont., 88 P. (2d) 6.

2215.2. Action — parties — county as applicant — complaint — contents — several tracts of land — defendants — who may be joined as — pending or future actions — applicability of procedure. The action shall be commenced by the filing of a verified complaint in which the parties so commencing the same shall be named as plaintiff and all persons having an interest in said property, or in any part thereof, either as owner, encumbrancer, or otherwise, whose interest shall appear of record in the office of the county clerk and recorder of the county in which the action is instituted, together with the county treasurer of said county, shall be named as defendants; if the county is the applicant, the action shall be brought in the name of the county clerk and recorder of said county; the complaint shall, among other things, set forth the description of the real property involved, the year in which the delinquent taxes were assessed, the amount for which the property was sold, the amount of taxes subsequently paid, the date of the sale of said property, the person to whom sold, the nature of the interest in each separate part of said land held by the respective defendants, or any of them, and the amount of money necessary to redeem the said lands from the said sales. Several tracts of land, contiguous or non-contiguous, and whether owned by different defendants and whether sold at the same time, or at different times, may be set forth in one complaint and all persons claiming any title to, or interest in, or lien upon, any of said premises, or any part thereof, although their said claims are independent and not in common and do not cover the same tracts, may be joined as defendants. The rule of procedure outlined by this section shall apply to all actions brought to procure a tax deed hereunder and that may now be pending as well as all actions hereafter commenced under the provisions of this section. [L. '37, Ch. 100, § 1, amending R. C. M. 1935, § 2215.2. Approved and in effect March 15, 1937.]

Sections 2 repeals conflicting laws.

2215.9. Effect of deed. The deed hereafter issued under this or any other law of this state shall convey to the grantee the absolute title to the lands described therein as of the date of the expiration of the period for redemption, free of all encumbrances and clear of any and all claims of said defendants to said action except the lien for taxes which may have attached subsequent to the sale and

the lien of any special, local improvement, irrigation and drainage assessments levied against the property payable after the execution of said deed, and except when the land is owned by the United States or this state, in which case it is prima facie evidence of the right of possession accrued as of the date of expiration of such period for redemption. [L. '37, Ch. 63, § 1, amending R. C. M. 1935, § 2215.9. Approved and in effect February 25, 1937.]

Section 2 repeals conflicting laws.

1939. ✓ It was the legislative intent, in enacting section 2215.9, to amend section 2215 and to limit the title conveyed by tax deed, under any method provided by the statutes, so as to preserve the lien of special assessments payable after the execution of the deed. Cascade County v. Weaver, Mont., 90 P. (2d) 164.

1939. ✓ The application of this section to improvement district assessments held not retroactive, but prospective. Cascade County v. Weaver, Mont., 90 P. (2d) 164.

1939. ✓ Where improvement district was created after the passage of this section the title of a lot acquired by county under tax deed proceedings was subject to district assessments. Cascade County v. Weaver, Mont., 90 P. (2d) 164.

1939. ✓ In action by county to quiet title to city lot acquired by it under tax deed proceedings the claim by city that title was subject to payment of improvement district assessments held not a collateral attack upon deed, as question raised was as to interpretation to be given to deed. Cascade County v. Weaver, Mont., 90 P. (2d) 164.

2222. Taxes, etc., illegally collected to be refunded — claim for refund — time of filing — payment from general fund. Any taxes, percentum and costs, heretofore or hereafter, paid more than once or erroneously or illegally collected, may, by order of the board of county commissioners, be refunded by the county treasurer. Whenever any payment shall have been made to the state treasurer, as provided in section 2255 of this code, and it shall afterwards appear to the satisfaction of the board of county commissioners that a portion of the money so paid should be refunded as herein provided, said board of county commissioners may refund such portion of said taxes, penalties and costs so paid to the state treasurer, and upon the rendering of the report required by section 2257 of this code, the county clerk shall certify to the state auditor, in such form as the state auditor may prescribe, all amounts so refunded, and in the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts so refunded.

When any part of the taxes, penalties or costs hereinbefore referred to were levied in behalf of any school district or municipal or other public corporation, and collected by the

county treasurer, the same may be refunded upon the order of the board of county commissioners.

No order for the refund of any taxes, percentage or costs under this section shall be made except upon a claim therefor, verified by the person who has paid such tax, penalty or costs, or his guardian, or in case of his death by his executor or administrator, which claim must be filed within two years after the date when the second half of such taxes would have become delinquent if the same had not been paid.

All refunds ordered to be paid by the board of county commissioners shall be paid by the county treasurer out of the general fund of the county and the county treasurer shall then make such transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made therefrom on account of such other funds. [L. '39, Ch. 201, § 1, amending R. C. M. 1935, § 2222. Approved and in effect March 17, 1939.

1937. ✓ The object of this section was to avoid, where properly applicable, the harsh common-law rule recognized by the courts, in proper cases, prohibiting the recovery of taxes voluntarily paid. *Christofferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

1937. ✓ The assignee of a tax sale certificate by the county on state land which has been cancelled for non-payment of installments by the purchaser, so that the land has reverted to the state, may recover the taxes paid by him, on such land, to the county. *Christofferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

1937. ✓ Since the legislature recognized a distinction between taxes "erroneously collected" and those "illegally collected," what the supreme court has said in previous decisions, with reference to the repeal of a section with relation to taxes illegally paid, cannot be held to have declared the repeal of a section relating to taxes erroneously paid. *Christofferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

2222.1. Repeals — construction of act — conflicts. All acts and parts of acts in conflict herewith are hereby repealed, but none of the provisions of this act shall be deemed or construed to be in conflict with the provisions of sections 2268 to 2272, inclusive, of this code, but this act and the provisions of such sections shall provide and afford concurrent remedies. [L. '39, Ch. 201, § 2, amending R. C. M. 1935, § 2222. Approved and in effect March 17, 1939.

2223. When property assessed more than once.

1938. ✓ Cited in *State ex rel. Sadler v. Evans*, 106 Mont. 286, 77 P. (2d) 394.

1937. ✓ The objection that unlawful discrimination results from the fact that, under the law concerning

registration, licensing, and taxation of motor vehicles, section 1759 et seq., double assessment and taxation is authorized, once while the motor vehicle is in the hands of the dealer and once in the same year while in the hands of the purchaser, was held untenable, because it is the duty of the county treasurer, where there is a double assessment for the same year, to collect only the tax justly due and make return of the facts under affidavit to the county clerk, and if the tax has not been paid by the dealer the obligation of the purchaser to pay it will be adjusted in the purchase price. *Whier v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

2231. Assessment of property on which a tax sale certificate has been purchased by county — resale for unpaid subsequent taxes — when tax deed issued — right of redemption. In case a tax sale certificate on property assessed for taxes is purchased by the county, or otherwise, pursuant to provisions of section 2191 of this code, it must be assessed for taxes the next year in the same manner as if it had not been so purchased. If the taxes resulting from such assessment are not paid when such taxes become due, said property shall again be sold, in manner as above described, and said assessment of such property, and the sale of same, when the said taxes have not been paid upon coming due, or the property redeemed, shall be continued until the time when such property shall have been redeemed from such sales; provided, however, that no tax deed shall issue to any purchaser, other than the county under said sales, until the applicant for such tax deed shall have paid and discharged all taxes, penalty and interest accumulated at the time of such application. Providing further that purchasers of certificates of tax sale, for years subsequent to the oldest outstanding tax sales certificate, shall have the same privilege of redemption, of such oldest outstanding tax sales certificate, as is the privilege of the original owner of the property. Nothing herein contained shall be construed to apply to holders of tax certificates, other than counties, at the time this act becomes effective. [L. '37, Ch. 54, § 1, amending R. C. M. 1935, § 2231. Approved and in effect February 25, 1937.

2233.1. Redemption of land sold to county — time — payment of tax only — when act inapplicable. That from and after the passage and approval of this act, any person having an equitable or legal interest in real estate heretofore sold for taxes to any county or which has been struck off to such county when the property was offered for sale and no assignment of the certificate of such sale has been made by the county commissioners of the county making such sale, or on which taxes are delinquent for the first installment of the year 1936, shall be permitted to redeem the same by paying the original tax due

thereon, and without the payment of any penalty or interest thereon. Such redemption of real estate must be made on or before the first day of December, 1938, and if such redemption is not made by the first day of December, 1938, then redemption can only be made by payment of the original tax with accrued interest, penalties and costs as now provided by law. This act shall not apply to the purchaser of any certificate of sale made prior to the passage and approval of this act. [L. '37, Ch. 70, § 1. Approved and in effect March 1, 1937.

2233.2. Notice of act — publication — mailing — officers' duty. County treasurers and city treasurers in their respective counties and cities shall cause to be published in at least one issue of the official newspaper of such county or city a notice of such right of redemption and extension of time, such notice to be published within sixty days from the approval of this act. It shall be the duty of the county treasurer of each county to mail notice to delinquent taxpayers, to their last known address, advising them of their rights and the amount of delinquent taxes under the provisions of this chapter within sixty (60) days after the approval of this act. [L. '37, Ch. 70, § 2. Approved and in effect March 1, 1937.

2233.3. No assignments of tax sales during life of act. County and city treasurers shall not make assignments of tax sales until after the first day of December, 1938. [L. '37, Ch. 70, § 3. Approved and in effect March 1, 1937.

2233.4. Partial invalidity saving clause — declaration of emergency. If any section, sub-section, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly declares that it would have passed this act and each section, sub-section, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, sub-section, sentence, clause, or phrase be declared unconstitutional, the same being necessary to the welfare of the state of Montana and the political subdivisions thereof by reason of the existence of an extraordinary emergency. [L. '37, Ch. 70, § 4. Approved and in effect March 1, 1937.

2233.5. Other acts — stay of operation. This act stays the operation of all acts and parts of acts in conflict herewith until the first day of December, 1938, but does not otherwise affect such acts or parts of acts. [L. '37, Ch. 70, § 6. Approved and in effect March 1, 1937.

2233.6. Redemption of property sold to county for taxes — extension of time — waiver of penalties — powers of county commissioners as to tax deeds. That from and after the passage and approval of this act, any person having an equitable or legal interest in real estate heretofore sold for taxes to any county or which has been struck off to such county when the property was offered for sale and no assignment of the certificate of such sale has been made by the county commissioners of the county making such sale, or on which taxes are delinquent for the first installment of the year 1938, shall be permitted to redeem the same by paying the original tax due thereon, and without the payment of any penalty or interest thereon. Such redemption of real estate must be made on or before the first day of February, 1941, and if such redemption is not made by the first day of February, 1941, then redemption can only be made by payment of the original tax with accrued interest, penalties and costs as now provided by law. Provided, that nothing herein contained shall be construed so as to limit, restrict or prevent boards of county commissioners from ordering that applications be made for the issuance of tax deeds, or the issuance of tax deeds to counties, or the assignment of certificates of tax sale by county or city treasurers during the period between the time this act takes effect and February first, 1941, it being intended that during such period, boards of county commissioners may order applications to be made for tax deeds and that tax deeds may be issued to counties, and that county treasurers may assign certificates of sale in the same way, in the same manner and to the same extent as though this act had not been passed. This act shall not apply to the holder of any certificate of sale other than a county. [L. '39, Ch. 11, § 1. Approved and in effect February 7, 1939.

2233.7. Partial invalidity of act — emergency. If any section, sub-section, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly declares that it would have passed this act and each section, sub-section, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, sub-section, sentence, clause, or phrase be declared unconstitutional, the same being necessary to the welfare of the state of Montana and the political subdivisions thereof by reason of the existence of an extraordinary emergency. [L. '39, Ch. 11, § 2. Approved and in effect February 7, 1939.

2235. Sale of unredeemed property by county commissioners — notice — publication

— sale — terms — exchange for bonds — county treasurer — duties — deed — issuance by chairman of county commissioners' board — sales and deeds — validation — proceeds of sale — disposition — apportionment — proration. Whenever the county has become or attempted to become the purchaser of any property, real or personal, of a value in excess of one hundred dollars (\$100.00), sold for delinquent taxes, and said property has not been redeemed by the person entitled to do so, and a tax deed or instrument purporting to convey title has been issued to the county, whether the same was regular or irregular, valid or invalid, the board of county commissioners may, at any time, by an order entered upon the minutes of its proceedings, sell such property at public auction at the front door of the courthouse; provided, however, that thirty (30) days' notice of such sale shall be given by publication in a newspaper printed in the county, such notice to be published once a week for three successive weeks, and by posting notice of such sale in at least three public places in the county.

Such sale may be made for cash or, in the case of real property, on such terms as the board of county commissioners may approve; provided, however, that if such sale is made on terms at least twenty (20%) per centum of the purchase price shall be paid in cash at the date of sale, and the remainder may be paid in installments extending over a period not to exceed five years, and all such deferred payments shall bear interest at the rate of four (4%) percentum per annum.

Provided, further, that in the case of real estate, the board of county commissioners may in its discretion exchange said real estate for bonds issued by the home owners loan corporation, or any bonds, debentures, or other securities issued by any company or corporation organized under any act of the congress of the United States upon which said bonds, debentures or other securities the interest or principal is guaranteed by the United States. Such bonds may be taken at not more than the par value thereof, as to all or any part of the purchase price, all in accordance with the terms and conditions as in this act provided; and no such bonds may be accepted for part or full payment if the purchase price shall be less than the appraised value as set by the board of county commissioners.

The county treasurer shall hold such bonds, debentures or other securities and collect the interest thereon and the principal thereof when due; all money collected or received shall be distributed as hereinafter provided. The board of county commissioners shall in its discretion dispose of such bonds from time

to time for the use and benefit of the county at not less than the market value thereof.

If a sale is made on terms the chairman of the board of county commissioners shall execute a contract containing such terms as shall be provided by a uniform contract prescribed by the board of equalization upon payment of the purchase price in full together with all interest which may become due on any installments, or deferred payments, the chairman of the board of county commissioners shall execute a deed to the purchaser, or his assigns, or such other instrument as will be sufficient to convey all of the title of the county in and to the property so sold. Provided, further, that at any time before such sale, the taxpayer whose property has been deeded to the county may purchase such property by payment to the county of the full amount of the taxes, penalties and interest for which such property was sold and such purchase and payment may be effected by an installment contract with annual payments, as provided in section 4465.9.

On the first Monday in March following the execution of such contract, or deed, as the case may be, the property shall be subject to taxation in the name of the purchaser or his assignee, and the purchaser, or his assignee, shall thereafter pay all taxes and assessments lawfully laid against such property.

All sales heretofore made, or attempted to be made, by counties of property purchased for taxes, and the deeds to purchasers from such counties, whether or not irregular or void, for any reason, or because of any irregularity or failure to follow the directions or comply with the provisions of any statute relating to such deeds, or relating to the taxation or sale of such property for taxes, or the time or manner of redeeming property, or of securing a tax deed, are hereby confirmed, and said deeds and any deed or contract executed under this section shall vest in the purchaser, as of the date of said deed, or contract, all the right, title, interest, estate, lien, claim and demand of the state of Montana, and of the county, in and to said real estate, including the right to recover unpaid taxes, interest and penalties if the tax sale or any of the tax proceedings or tax deed shall be attacked and held irregular or void. If the property real or personal of which the county has become possessed, be of a value of less than one hundred dollars (\$100.00), it will be sold in accordance with the provisions of section 4465.9.

The proceeds of every such sale shall be paid over to the county treasurer, who shall apportion and distribute the same in the following manner:

1. If such proceeds are in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, then so much of such proceeds shall be credited to each fund or purpose, as the same would have received had such taxes been paid before becoming delinquent, and all excess shall be credited to the general fund of the county.

2. If such proceeds shall be less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds, and purposes, without penalty or interest, then such proceeds shall be pro rated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes. [L. '39, Ch. 181, § 1, amending R. C. M. 1935, § 2235. Approved and in effect March 17, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 200

COLLECTION OF PERSONAL PROPERTY TAXES NOT A LIEN ON REAL ESTATE

Section

- 2238. Duty of assessor—certain personal property tax assessments—duty to report.
- 2239. Duty of treasurer—uncollected personal property taxes—liability of treasurer—collection by seizure and sale.
- 2252.3. Redemption without penalty or interest.
- 2252.4. Notice of act—publication—mailing to taxpayer—duty of treasurers.
- 2252.5. Sale of property—amount to be sold.
- 2252.6. Partial invalidity saving clause—declaration of emergency.
- 2252.7. Conflicting acts stayed.

2238. Duty of assessor—certain personal property tax assessments—duty to report. It shall be the duty of the assessor, upon discovery of any personal property in the county, the taxes upon which are not in his opinion a lien upon real property sufficient to secure the payment of such taxes, to immediately, and in any event not more than ten days thereafter, make a report to the treasurer, setting forth the nature, amount and assessed valuation of such property, where the same is located, and the name and address of the owner, claimant, or other person in possession of the same, and where such personal property is located in any city or town, which shall have provided by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city or town treasurer, also and at the same time furnish to said city or town treas-

urer at the same time a duplicate of such notice to the county treasurer. [L. '39, Ch. 6, § 1, amending R. C. M. 1935, § 2238. Approved and in effect February 7, 1939.]

Section 2 repeals conflicting laws.

1937. ✓ Cited in *Wheir v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

2239. Duty of treasurer—uncollected personal property taxes—liability of treasurer—collection by seizure and sale. The county treasurer must collect the taxes on all personal property, and in the case provided in the preceding section [2238], it shall be the duty of the treasurer immediately upon receipt of such report from the assessor to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. The county treasurer must at the time of receiving the assessor's report, and in any event within thirty days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed and proceed to sell the same, in the same manner as property is sold on execution by the sheriff, and the county treasurer may for the purpose of making such levy and sale, designate and appoint the sheriff as his deputy, and such sheriff shall be entitled to receive the same fees as he is entitled to in making a seizure and sale under execution.

For the purpose of determining the taxes due, on such personal property, the treasurer must use the levy made during the previous year, if the levy for the current year has not yet been made. The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the wilful failure and neglect of such treasurer to levy upon and sell such personal property for the taxes levied thereon.

Nothing herein shall be construed as to prevent the county treasurer from collecting taxes due on personal property by seizure and sale thereof at any time after the expiration of the period hereinbefore mentioned. [L. '39, Ch. 107, § 1, amending R. C. M. 1935, § 2239. Approved and in effect March 3, 1939.]

Section 2 repeals conflicting laws.

2247. Rate of taxation where property is taxable.

1937. ✓ Section 2247 was not repealed by L. '37, Ch. 72, amending sections 1759 et seq., so that the provisions in section 2247, relating to adjustments of taxes so that the tax finally paid shall conform to the rate for the current year, applies to taxes on motor vehicles under L. '37, Ch. 72. *Wheir v. Dye*, 105 Mont. 347, 73 P. (2d) 209.

2252.3. Redemption without penalty or interest. That from and after the passage and approval of this act, any person having an equitable or legal interest in any personal property on which the taxes have become delinquent prior to December 1, 1936, shall be permitted to redeem such personal property from tax lien by paying the original tax due thereon and without the payment of penalty or interest thereon, provided that such personal tax is paid on or before the first day of December, 1938. If such taxes are not paid on or before the first day of December, 1938, then such redemption from tax lien can only be made by paying the original tax, together with penalty and accrued interest, as provided by law. [L. '37, Ch. 20, § 1. Approved and in effect February 17, 1937.]

2252.4. Notice of act — publication — mailing to taxpayer — duty of treasurers. County treasurers and city treasurers in their respective counties and cities shall cause to be published in at least one issue of the official newspaper of such county or city a notice of such right of redemption and extension of time, such notice to be published within sixty days from the approval of this act. It shall be the duty of the county treasurer of each county to mail notice to delinquent taxpayers to the last known address, advising them of their rights under the provisions of this chapter within sixty (60) days after the approval of this act. [L. '37, Ch. 20, § 2. Approved and in effect February 17, 1937.]

2252.5. Sale of property — amount to be sold. Any county or city treasurer, or any other county officer having authority to seize and sell personal property for the payment of delinquent taxes, shall sell only such portion of the property seized for sale as will pay the original tax without penalty or interest. [L. '37, Ch. 20, § 3. Approved and in effect February 17, 1937.]

2252.6. Partial invalidity saving clause — declaration of emergency. If any section, subsection, sentence, clause or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly declares that it would have passed this act and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional the same being necessary to the welfare of the state of Montana and the political subdivisions thereof by reason of the existence of an extraordinary emergency. [L. '37, Ch. 20, § 4. Approved and in effect February 17, 1937.]

2252.7. Conflicting acts stayed. This act stays the operation of all acts and parts of acts in conflict herewith until the first day of December, 1938, but does not otherwise effect [affect] such acts or parts of act. [L. '37, Ch. 20, § 6. Approved and in effect February 17, 1937.]

Section 5 repeals conflicting laws.

CHAPTER 201

COLLECTING TAXES BY SUIT

2253. Collection of taxes by action.

1938. Cited in *Calkins v. Smith*, 106 Mont. 453, 78 P. (2d) 74.

CHAPTER 203

PAYMENT OF TAXES UNDER PROTEST— ACTIONS TO RECOVER—INCREASE OVER STATEMENT OF OWNER

2268. Injunction does not lie to restrain enforcement of tax.

Note. Section 2222 shall not be deemed or construed to be in conflict with the provisions of sections 2268 to 2272, inclusive, but shall provide and afford concurrent remedies. See § 2222.1.

1938. A suit for an injunction to restrain the collection of a tax when there was more than enough money in the county treasury to pay all legal obligations of the county, and the object of the levy was to buy up county bonds before they matured, was improperly dismissed, as payment under protest and suit for recovery back was not the only remedy. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1937. Since the legislature recognized a distinction between taxes "erroneously collected" and those "illegally collected," what the supreme court has said in previous decisions, with reference to the repeal of a section with relation to taxes illegally paid, cannot be held to have declared the repeal of a section relating to taxes erroneously paid. *Christofferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

2269. Payment of taxes under protest — action to recover.

1938. United States government issued patents to Indians without their consent and taxes were assessed thereon by the county. Taxes and penalties were paid by some of the Indians prior to the cancellation of the patents by the United States. In a suit to quiet title to these properties and recover taxes and penalties it was held that the taxes could be recovered but not the interest and penalties. *Glacier County, Montana, et al. v. United States*, 99 Fed. (2d) 733.

1937. Since the legislature recognized a distinction between taxes "erroneously collected" and those "illegally collected," what the supreme court has said in previous decisions, with reference to the repeal of a section with relation to taxes illegally paid, cannot be held to have declared the repeal of a

section relating to taxes erroneously paid. *Christoferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

2272. Other remedies superseded.

1937. ✓ Since the legislature recognized a distinction between taxes "erroneously collected" and those "illegally collected," what the supreme court has said in previous decisions, with reference to the repeal of a section with relation to taxes illegally paid, cannot be held to have declared the repeal of a section relating to taxes erroneously paid. *Christoferson v. Chouteau County*, 105 Mont. 577, 74 P. (2d) 427.

CHAPTER 204

INCOME TAX

Section

2295.7. Gross income—what included in—life insurance policy proceeds—returned premiums—gifts—compensation for personal injuries or sickness—corporate stock dividends—non-resident taxpayers.

2295.1. Income tax — definitions.

1935. ✓ The primary purpose of this chapter was to impose a tax upon net incomes, to be determined by deducting from the gross incomes business expenses and losses of each tax year. *State ex rel. Whitlock v. State Board of Equalization*, 100 Mont. 72, 45 P. (2d) 684.

2295.7. Gross income — what included in — life insurance policy proceeds — returned premiums — gifts — compensation for personal injuries or sickness — corporate stock dividends — non-resident taxpayers. The term "gross income";

(1) Includes gains, profits and income derived from salaries, wages or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce, sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, royalties, securities, or the transaction of any business carried on for gain or profit, and income derived from any source whatever. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer; unless, under the methods of accounting permitted in this act, any such amounts are to be properly accounted for as of a different period;

(2) But does not include the following items which are exempt from taxation under this act:

(a) The proceeds of life insurance policies and contracts paid upon the death of the insured to individual beneficiaries or to the estate of the insured.

(b) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.

(c) The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income).

(d) Any amount received through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness, or through the war risk insurance act or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States, and their dependents.

(e) Stock dividends when received by a shareholder shall not be subject to tax, but if before or after the distribution of any such dividend, the corporation proceeds to cancel or redeem its stock at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock shall be treated as a taxable dividend and included in gross income; provided, however, that any stock dividend shall be considered in computing gain, profit or income upon the sale, exchange or other disposition of the stock upon which a stock dividend has been declared or of the stock included in such stock dividend.

(3) In the case of taxpayers other than residents, gross income includes only the gross income from sources within this state, but shall not include annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends on stock of corporations; except to the extent that such annuities, bank deposits, bonds, notes or other obligations or stocks shall be a part of income from any business, trade, profession or occupation carried on in this state. [L. '39, Ch. 7, § 1, amending R. C. M. 1935, § 2295.7, as amended by L. '37, Ch. 28, § 1. Approved and in effect February 7, 1939.]

Section 2 repeals conflicting laws.

2295.8. Deductions allowed in computing net income.

1935. ✓ The primary purpose of this chapter was to impose a tax upon net incomes, to be determined by deducting from the gross incomes business expenses

and losses of each tax year. State ex rel. Whitlock v. State Board of Equalization, 100 Mont. 72, 45 P. (2d) 684.

1935. ✓ Depreciation in the value of property occurring before the income tax law became effective could not be deducted as a loss for the year following the commencement of the operation of the law, but only the difference between the value when the law went into effect and the selling price. State ex rel. Whitlock v. State Board of Equalization, 100 Mont. 72, 45 P. (2d) 684.

1935. ✓ Taxpayer may not claim a deduction for loss on an investment in property until such time as he has finally disposed of it; until then no loss is sustained. State ex rel. Whitlock v. State Board of Equalization, 100 Mont. 72, 45 P. (2d) 684.

1937. ✓ Under section 2295.8 where inheritance tax was collected from property of a decedent's estate by payment by beneficiary's personal representative and state had a lien therefor on property of the estate, it was deductible from amount of income tax on estate. State ex rel. Davis v. State Board of Equalization, 104 Mont. 52, 64 P. (2d) 1057.

2295.12. Tax on beneficiaries or fiduciaries of estates or trusts.

1937. ✓ Under section 2295.8 where inheritance tax was collected from property of a decedent's estate by payment by beneficiary's personal representative and state had a lien therefor on property of the estate, it was deductible from amount of income tax on estate. State ex rel. Davis v. State Board of Equalization, 104 Mont. 52, 64 P. (2d) 1057.

2295.23. Review of board's findings on application for revision—appeal to supreme court.

1937. ✓ Under this section, on review by certiorari proceedings of the revision and settlement by the board of equalization of computation of income tax, the district court was held without authority to enter a judgment for the return of the money paid under protest. State ex rel. Davis v. State Board of Equalization, 104 Mont. 52, 64 P. (2d) 1057.

CHAPTER 205

CORPORATION LICENSE TAX

Section

2296. Corporation license tax—definitions—amount—source of income—exemptions—capital stock associations—cooperatives—holding companies—public utilities.

2296. Corporation license tax—definitions—amount—source of income—exemptions—capital stock associations—cooperatives—holding companies—public utilities. The term corporation includes associations, joint stock companies, common law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying

on business in said state of Montana, three (3) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations whose net income is taxable under this title; and every corporation, except as hereinafter provided, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of three (3) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including the interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock, or from net earnings of resident corporations, joint stock companies or associations whose net income is taxable under this title. Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than five dollars (\$5.00).

There shall not be taxed under this title any income received by any—

First. Labor, agricultural or horticultural organization;

Second. Mutual savings bank not having a capital stock represented by shares;

Third. Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

Fourth. Domestic building and loan associations or cooperative bank without capital stock, organized and operated for mutual purposes and without profit;

Fifth. Cemetery company owned and operated exclusively for the benefit of its members;

Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

Seventh. Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which

inures to the benefit of any private stockholder or individual;

Eighth. Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

Ninth. Club organized and operated exclusively for pleasure, recreation and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

Tenth. Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

Eleventh. Labor, agricultural or horticultural cooperatives organized and operated on a cooperative basis; (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or 6 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose. Such an association may market the products of non-members in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for non-members in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases.

Business done with the United States, state of Montana or its political subdivisions shall be exempt under this act. Any cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis.

Twelfth. Corporation or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

Thirteenth. In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function. [L. '37, Ch. 92, § 1, amending R. C. M. 1935, § 2296, as amended by L. '37, Ch. 29, § 1. Approved and in effect March 12, 1937.]

Section 2 repeals conflicting laws.

1938. While it is within the power of the legislature to tax the net income of a corporation from interest-bearing obligations of non-residents, this was not done by section 2296, under the maxim *expressio unius est exclusio alterius*. *Montana Life Ins. Co. v. Shannon*, 106 Mont. 500, 78 P. (2d) 946.

1936. Where an oil-producing corporation received income from sources other than oil production from restricted Blackfeet Indian lands, as well as from such lands, it was held subject to corporation license tax. *Santa Rita Oil & Gas Co. v. Board of Equalization*, 101 Mont. 268, 54 P. (2d) 117; *British-American Oil Producing Co. v. Board of Equalization*, 101 Mont. 293, 54 P. (2d) 129.

2297.1. Segregation of income within and without state.

1938. While it is within the power of the legislature to tax the net income of a corporation from interest-bearing obligations of non-residents, this was not done by section 2296, under the maxim *expressio unius est exclusio alterius*. *Montana Life Ins. Co. v. Shannon*, 106 Mont. 500, 78 P. (2d) 946.

1938. This section held not applicable where the gross income within the state was known. *Montana Life Ins. Co. v. Shannon*, 106 Mont. 500, 78 P. (2d) 946.

CHAPTER 208

COAL MINES LICENSE TAX

Section

2317. Coal mines license tax—amount—exceptions.

2323. Procedure to determine tax—penalty—interest—tax lien.

2317. Coal mines license tax—amount—exceptions. Every person engaged in or carrying on the business of coal mining, or engaged in the business of working or operat-

ing any mine or mining property, in the state of Montana, from which marketable or merchantable coal of any kind is mined, extracted or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1921, and each year thereafter, when engaged in or carrying on such business, work or operations, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work and operations, in an amount equal to five cents per ton for each and every ton in excess of fifty thousand tons of marketable or merchantable coal mined, extracted or produced by such person in the state of Montana and shipped by such person during such year, or used by such person for any purpose except in connection with the operating of the mine or mining property from which the same was mined, extracted or produced, or delivered by such person to any other person for shipment, sale or use by such other person; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed, by any person to mine coal, or to work in or about, or in connection with any coal mine or coal property or business, to pay such license tax, nor shall any work required to be done in prospecting for, or in developing, or in opening up any coal mine or mining property, be deemed to be the carrying on of a coal mining business, or the engaging in the business of working or operating of a coal mine; provided, further, that if during any such work of developing or opening up any coal mine or coal mining property, any marketable or merchantable coal shall be mined, extracted or produced and sold, then the same shall be deemed the carrying on of a coal mining business and the engaging in the business of working and operating a coal mine. [L. '39, Ch. 200, § 1, amending R. C. M. 1935, § 2317. Approved and in effect March 17, 1939.]

Section 3 repeals conflicting laws.

2323. Procedure to determine tax — penalty — interest — tax lien. If any person shall fail, neglect or refuse to file any statement required by section 2321 of this code, or shall fail to make payment of such license tax within the time therein required, the state board of equalization, shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of tons of marketable or merchantable coal mined, extracted or produced by such person, during such quarter and shipped or used by such person, or delivered by such person to any

other person for shipment, sale or use by such other person, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement in triplicate, showing the same, and shall add to the amount of such license taxes, ten per centum (10%) thereof as a penalty, and one of such statements shall be filed in the office of the county clerk and recorder of the county in which the coal was produced and one of such statements delivered to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof, at the rate of eight per centum (8%) per annum from the date of making of such statement by the state board of equalization until paid. Upon request of the state treasurer, it shall be the duty of the attorney general or any county attorney to commence, and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same.

The license tax assessed against any person under this act, together with penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and upon the mine from which the coal was produced, which lien shall attach on the date when the license tax is certified to the state treasurer by the state board of equalization and such lien may be enforced in the name of the state of Montana, in the same manner as other liens are enforced at law. [L. '39, Ch. 200, § 2, amending R. C. M. 1935, § 2323. Approved and in effect March 17, 1939.]

Section 3 repeals conflicting laws.

CHAPTER 210

ELECTRICAL ENERGY PRODUCERS' LICENSE TAX

Section

- 2343.1. Electrical energy producers—license tax—amount—monthly statement of sales.
- 2343.1a. Same—deposit in state general fund.
- 2343.3. Disposition of revenue—delinquency—interest—distribution.

2343.1. Electrical energy producers—license tax — amount — monthly statement of sales. That in addition to the license tax now provided by law, each and every individual, firm, partnership, common law trust, corporation, association or other organization now engaged in the generation, manufacture or production of electricity, and electrical energy in the state of Montana, either through water power or by any other means, for barter, sale or exchange and hereinafter referred to as the "producer", shall on or before the fifteenth

(15) day of each calendar month beginning with the fifteenth (15) day of April, 1934, render a statement to the state board of equalization of the state of Montana, showing the gross amount of money received on account of sales of electricity and electrical energy during the preceding calendar month without any deduction, and shall pay a license tax thereon in the sum of one per cent (1%) of such gross amount as shown on such statement in the manner and within the time hereinafter provided. [L. '37, Ch. 83, § 1, amending R. C. M. 1935, § 2343.1. Approved and in effect March 5, 1937.]

2343.1a. Same — deposit in state general fund. That whereas, the twenty-fifth legislative assembly provided that a certain portion of the revenues from the liquor licenses and hydro-electric tax be allocated to the public welfare fund and the social security fund, and thereafter inadvertently appropriated the full amount of the appropriations for the state department of public welfare for the present biennium from the general fund of the state of Montana, thereby depleting the same, and

Whereas, such inadvertent action has resulted in the accumulation of an unappropriated and unused residue in the above funds;

Now therefore, in order to correct the error made, the state treasurer and state auditor are hereby directed to transfer all such funds now in the public welfare fund and the social security fund to the general fund of the state, and that all future collections to these two funds, as set forth in section 2343.3, revised codes of Montana, 1935, as amended by chapter 83 of the laws of 1937, and section 29 of chapter 84 of the laws of 1937 [2815.192], be deposited in the general fund of the state of Montana. [L. '39, Ch. 2, § 1. Approved and in effect January 30, 1939.]

2343.3. Disposition of revenue—delinquency — interest — distribution. The state board of equalization shall receipt therefor and promptly turn same over to the state treasurer, and the state treasurer shall distribute the same to March 1, 1937, as follows: five per cent (5%) thereof to the relief fund, ninety per cent (90%) thereof to the general fund and five per cent (5%) thereof to the common school interest and income fund and after March 1, 1937, the same shall be distributed as follows: twenty-five per cent (25%) to the general fund, twenty-five per cent (25%) to the common school interest and income fund, twenty-five per cent (25%) to the social security fund and twenty-five per cent (25%) to the state public school general fund. Taxes not paid on the due date shall become delinquent and shall bear interest

from said due date at the rate of twelve per cent (12%) per annum. [L. '37, Ch. 83, § 1, amending R. C. M. 1935, § 2343.3, as amended by L. '37, Ch. 83, § 2. Approved and in effect March 5, 1937.]

CHAPTER 212

TELEPHONE LICENSE TAX

Section

- 2355.10. Telephone business—annual tax on gross income—bills for service—not to set out tax—payable quarterly.
- 2355.11. Statement of gross income—filing—board of equalization—interstate business—exclusion—payment.
- 2355.12. Board of equalization—rules—adoption—publication.
- 2355.13. Tax delinquency—penalty.
- 2355.14. Records—taxpayers to keep.
- 2355.15. Taxpayer's statement—failure to file—false statement—penalty.
- 2355.16. Statement—failure to file—payment—failure—board—duty—interest and penalties—collection—action—lien—filing statement—priority—enjoining collection—lien release.
- 2355.17. Taxpayer's books—inspection by board.
- 2355.18. Tax collections—disposition.

2355.10. Telephone business — annual tax on gross income — bills for service — not to set out tax — payable quarterly. That on and after the first day of April 1937, there is hereby levied and shall be collected an annual tax of (1¼%) of the gross income derived from any telephone business within this state including the transmission of telephone messages in this state, over telephone lines in this state owned by any person, association or corporation; provided, however, that no bill, statement or account rendered or given any customer shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this act. Such annual license tax shall be paid in quarterly installments for the quarters ending respectively March 31, June 30, September 30, and December 31, in each year. [L. '37, Ch. 94, § 1. Approved March 12, 1937; in effect April 1, 1937.]

2355.11. Statement of gross income — filing — board of equalization — interstate business — exclusion — payment. Each and every person, association or corporation liable to tax under this act engaged in carrying on such telephone business in this state shall, within sixty (60) days after the end of each quarter, beginning with the quarter ending June 30, 1937, make out in duplicate and file with the state board of equalization, under oath, a statement in such form as the state board of equalization may require and prescribe, show-

ing the total gross income of such person, association or corporation derived from the telephone business within this state including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within this state and from those originating within but terminating outside of this state during the preceding quarter, and containing such other information as the state board of equalization may require; and shall accompany such statement with the payment to the state board of equalization of a license tax in amount equal to (1¼%) of such gross income. [L. '37, Ch. 94, § 2. Approved March 12, 1937; in effect April 1, 1937.]

2355.12. Board of equalization — rules — adoption — publication. The state board of equalization shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act. [L. '37, Ch. 94, § 3. Approved March 12, 1937; in effect April 1, 1937.]

2355.13. Tax delinquency — penalty. Any such license tax not paid within the time herein provided for shall be delinquent and a penalty of ten per cent (10%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. [L. '37, Ch. 94, § 4. Approved March 12, 1937; in effect April 1, 1937.]

2355.14. Records—taxpayers to keep. Each person, association or corporation liable to tax under this act shall keep a record in such form as the state board of equalization shall require showing the total gross receipts, as herein described, and such other information as the state board of equalization may require. [L. '37, Ch. 94, § 5. Approved March 12, 1937; in effect April 1, 1937.]

2355.15. Taxpayer's statement — failure to file — false statement — penalty. Each person, association or corporation, who fails, neglects, or refuses to make and file the statements required by this act in the manner or within the time herein provided, or who shall make any false statement with reference to his said business of operating a telephone business, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in any amount not exceeding one thousand dollars (\$1,000.00), or imprisonment in the county jail for not to exceed six (6)

months, or shall be punished by the imposition of both such fine and imprisonment. [L. '37, Ch. 94, § 6. Approved March 12, 1937; in effect April 1, 1937.]

2355.16. Statement — failure to file — payment — failure — board — duty — interest and penalties — collection — action — lien — filing statement — priority — enjoining collection — lien release. If any person, association or corporation subject to the payment of such license tax shall fail, neglect or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent person, association or corporation, and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for non-payment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action to collect such license tax. All license taxes due from any person, association or corporation under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such person, association or corporation upon the filing by the state board of equalization, of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed with said board in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof. When the amount due the state is paid in full and before

the entry of foreclosure decree, the state treasurer shall release the said lien by filing, in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the person, association or corporation to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said license taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to said lien to insure the payment of the whole of said unpaid license taxes, penalty and interest. [L. '37, Ch. 94, § 7. Approved March 12, 1937; in effect April 1, 1937.]

2355.17. Taxpayer's books—inspection by board. The books and records of every person, association or corporation shall be open and subject to inspection by the state board of equalization or any of its employees or assistants during business hours so far as may be necessary to ascertain the amount of license tax due. [L. '37, Ch. 94, § 8. Approved March 12, 1937; in effect April 1, 1937.]

2355.18. Tax collections—disposition. All moneys received by the state treasurer in payment of license taxes under the provisions of this act shall be deposited by him and credited to the following: Fifty per cent (50%) shall be deposited by the state treasurer to the credit of the general fund of the state, and the remaining fifty per cent (50%) to the state public school general fund. [L. '37, Ch. 94, § 9. Approved March 12, 1937; in effect April 1, 1937.]

Section 10 is partial invalidity saving clause.

CHAPTER 216

STATE HIGHWAY DEBENTURES—GASOLINE DEALERS' AND DISTRIBUTORS' LICENSE TAX—DISTRIBUTION AND USE OF PROCEEDS OF TAX—LICENSE—REFUNDS OF TAX

Section

- 2381.4a. State highway treasury anticipation debentures act of 1938—purposes of act—amount of debentures authorized—disposition of proceeds.
- 2381.4b. Same—terms and conditions of debentures—interest coupons—negotiability—maturity—form—coupon form.
- 2381.4c. Same—date of debentures.
- 2381.4d. Same—issuance and sale of debentures constitutes contract between state and legal owner—terms of contract on part of state.

Section

- 2381.4e. Same—sale of debentures—resolution of highway commission—service of copy on state treasurer—advertisement—contents—bids—opening—award—rejection—certified check to be posted by bidders—cost of advertisement.
- 2381.4f. Same—proceeds of debentures—appropriation.
- 2381.4g. Same—public funds—investment in debentures.
- 2381.4h. Same—debentures—acceptance as security for public obligations or deposits of public funds—authorization.
- 2381.4i. Same—license tax upon distributors of gasoline—deductions for evaporation or other loss—debentures to be of equal rank.
- 2381.4j. Same—title of act.
- 2381.4k. Same—partial invalidity saving clause.
- 2381.4L. Same—effective date of act.
- 2381.4m. Same—purposes of act—emergency—effective date of amendment.
- 2381.4n. Initiative and referendum—election—highway anticipation debentures—validation.
- 2396.3. Construction moneys—allotment—method of determining—on basis of unimproved and uncompleted highway mileage in district.
- 2396.4. Gasoline tax refund—not used on highways—counties, cities, towns and school districts—showing of claimant—approval of board of equalization—permits for filing claims—record required—suspension of permit—separate invoices.

2381.3. State highway debentures—interest—maturity—form.

1939. Sections 2381.4a et seq. are not invalid as not providing for payment of outstanding debentures issued under Laws of 1931, chapter 95 (§ 2381.3), nor does it impair the security for the payment of debentures issued under that act. *Martin v. State Highway Commissioners*, Mont. _____, 88 P. (2d) 41.

2381.4a. State highway treasury anticipation debentures act of 1938—purposes of act—amount of debentures authorized—disposition of proceeds. That for the purpose of anticipating the revenue to accrue in the state highway fund of the state of Montana and for the purpose of assuring the ability of the state of Montana to secure any funds or moneys allocated to the state of Montana and made available to it by the acts of the congress of the United States in reference to the construction, betterment and maintenance of highways and to provide additional working funds for the state highway commission of the state of Montana in reference to the roads and highways of the state, a series of loans for the use and benefit and in the name of the state of Montana in a total principal sum of not to exceed three million dollars (\$3,000,000), is hereby authorized and directed, the proceeds of which loans shall be paid into the state treasury of the state of Montana and placed in the state highway fund therein, to be used for the purposes herein provided.

[Initiative measure No. 41, § 1, state highway treasury anticipation debentures act of 1938. Adopted at a state-wide election held November 8, 1938, and became effective by the governor's proclamation November 13, 1938. L. '39, page 743 et seq.

1939. Highway debentures act of 1938 (§ 2381.4a) does not violate Const. Art. 12, § 12. *Martin v. State Highway Commissioners*, Mont., 88 P. (2d) 41.

1939. Highway debentures act of 1938 (§ 2381.4a et seq.) is not an act relating to an "appropriation" of money within the meaning of Const. Art. 5, §§ 1, 34. *Martin v. State Highway Commissioners*, Mont., 88 P. (2d) 41.

1939. Highway debentures act of 1938 (§ 2381.4a et seq.) does not violate the provision of Const. Art. 13, § 2, in regard to levying of tax sufficient to pay interest and principal within time limited by law. *Martin v. State Highway Commissioners*, Mont., 88 P. (2d) 41.

1939. The title of highway debentures initiative act of 1938, sections 2381.4a-2381.4m, does not violate constitution article 5, § 23, as containing more than one subject not expressed in title. *Martin v. State Highway Commissioners*, Mont. 88 P. (2d) 41.

1939. Sections 2381.4a et seq. is not invalid as not providing for payment of outstanding debentures issued under laws of 1931, chapter 95 (§ 2381.3), nor does it impair the security for the payment of debentures issued under that act. *Martin v. State Highway Commissioners*, Mont., 88 P. (2d) 41.

2381.4b. Same — terms and conditions of debentures — interest coupons — negotiability — maturity — form — coupon form. The state highway commission of the state of Montana, acting by resolution adopted by vote of the majority of its members, is hereby authorized and directed to issue and sell state highway treasury anticipation debentures of the state of Montana, for the purpose hereinabove provided, in an amount not to exceed the aggregate principal sum of three million dollars (\$3,000,000).

Said debentures shall bear such rate or rates of interest, not to exceed, however, the rate of four per centum (4%) per annum, payable semi-annually, and shall be payable at the office of the state treasurer of the state of Montana at Helena, Montana, or at the option of the holders thereof, at the fiscal agent of the state of Montana, in the Borough of Manhattan, city and state of New York, both as to interest and principal, as such highway commission shall by its resolution direct, and shall be executed in the name of the state of Montana by the governor and state treasurer under the great seal of the state and shall be attested by the secretary of state.

The semi-annual installments of interest shall be evidenced by interest coupons attached to said debentures, which shall be executed by the engraved or lithographed facsimile signa-

tures of the governor and the secretary of state.

The principal of and interest upon such debentures shall be payable in lawful money of the United States of America, and all such debentures issued pursuant to the provisions of this act shall be fully negotiable within the meaning and for all the purposes of the negotiable instruments law as said law is now or may hereafter be in force in the state of Montana.

All of such debentures so issued shall mature at the expiration of ten (10) years from and after the date thereof and shall be callable at par and accrued interest for redemption prior to maturity on any interest payment date on, or after the expiration of, five (5) years from date thereof at the option of the state treasurer of the state of Montana, as provided herein. Said debentures and coupons shall be in substantially the following form:

Number..... \$......

UNITED STATES OF AMERICA
STATE OF MONTANA
STATE HIGHWAY TREASURY ANTICIPATION DEBENTURE
(STATE HIGHWAY FUND)

For value received the State of Montana acknowledges itself to owe and promises to pay to bearer, or if this debenture be registered as to principal, then to the registered holder hereof, from the state highway fund of the State of Montana, the sum of..... Dollars, (\$.....), on the.....day of19....., subject to the right of prior redemption as hereinafter set out, with interest hereon from the date hereof until paid at the rate of.....per centum (.....%), per annum, payable....., and semi-annually thereafter on the.....day of..... and of.....of each year, upon presentation and surrender of the annexed interest coupons as they severally become due. Both principal hereof and interest hereon are hereby made payable in lawful money of the United State of America, at the office of the state treasurer of the State of Montana, Helena, Montana, or at the option of the holder, at the fiscal agent of the State of Montana, in the Borough of Manhattan, City and State of New York.

This debenture is one of a series of debentures of like date, tenor and effect aggregating the principal sum of..... Dollars (\$.....).

The principal of and interest upon all debentures of this series are entitled to payment at maturity in the order of presentation of debenture and coupon at the office of the state

treasurer of the State of Montana or at the fiscal agent of said State in the Borough of Manhattan, City and State of New York, but are otherwise entitled to no priority or preference the one over the other, and said debentures are issued in pursuance of and subject to the terms and provisions of the state highway treasury anticipation debentures act of 1938, and this debenture and all other debentures of this series are secured by the monies derived from the excise or license tax on gasoline or motor fuels as provided for in said act and not otherwise.

The state treasurer of the State of Montana reserves the right to call and redeem this debenture prior to maturity at par and accrued interest, on....., or on any interest payment date thereafter, upon notice specifying the number of the debenture and date of redemption given by registered mail to the holder, if known, and as to any unknown holder such notice shall be published once each week for at least two (2) weeks, in a newspaper of general circulation printed and published in the City of New York, New York, and in the City of Helena, Montana, and shall be filed at the places of payment of principal and interest. The mailing of such notice shall be at least thirty (30) days preceding such redemption date. The first publication and the filing of such notice shall be at least thirty (30) days preceding such redemption date, and when such debentures shall have been called for redemption and payment made or provided for, interest thereon shall cease from and after the date so specified.

It is hereby certified, recited and declared that all matters, acts, conditions and things required by law to make this debenture a valid, outstanding and binding obligation against the state highway fund of the State of Montana, have happened and been done and performed, and the State of Montana hereby pledges its faith and credit that the excise or license tax on gasoline or motor fuels, as provided in the act authorizing the issuance hereof, shall not be reduced so long as this debenture or any of the debentures of this series shall remain outstanding and unpaid, except as in said act provided.

This debenture is subject to registration as to principal in the name of the owner on the registry books of the state treasurer, such registration to be evidenced by a notation of said treasurer on the back hereof and on said books, and after such registration no transfer hereof except noted hereon and upon such books shall be valid unless the last registration shall have been to bearer, provided that such registration shall not restrain the negoti-

ability of the interest coupons by delivery merely.

IN WITNESS WHEREOF and pursuant to the authority vested in them and each of them and under and by direction of the aforesaid act, the governor and the state treasurer of the State of Montana have hereunto affixed their and each of their official signatures, and the secretary of state of the State of Montana has attested the same by his official signature and the Great Seal of the State of Montana at Helena, the capital of said State, this..... day of....., A. D., 19.....

.....
Governor of the State of Montana.

.....
State Treasurer of the
State of Montana.

Attest:

.....
Secretary of State of the
State of Montana.

(Form of Coupon)

On the.....day of....., 19....., the State of Montana promises to pay to bearer, unless the debenture to which this coupon is attached shall have been called for prior payment as therein provided, and payment made or provided for, at the office of the state treasurer of the State of Montana, at Helena, Montana, or at the option of the holder, at the fiscal agent of the State of Montana, in the Borough of Manhattan, City and State of New York, the sum.....Dollars (\$.....), in lawful money of the United States of America, from the state highway fund of the State of Montana, for interest then due on its state highway treasury anticipation debenture dated....., 19....., and numbered.....

.....
Governor of the State of Montana.

Attest:

.....
Secretary of State of the
State of Montana.

On the back of each of said debentures shall be printed the following:

This debenture registered in my office this
.....day of....., A. D. 19.....

.....
State Treasurer of the
State of Montana.

Name of Registered Owner	Date of Registration	Signature of State Treasurer
.....
.....
.....

[L. '39, Ch. 30, § 1, amending state highway treasury anticipation debentures act of 1938, § 2, initiative measure No. 41, L. '39, p. 743 et seq. Amendment approved and in effect February 17, 1939.]

2381.4c. Same — date of debentures. All of said state highway treasury anticipation debentures shall bear date on the date they are actually issued and shall be issued and due and payable as provided in section 2 of this act [2381.4b]. The principal of and the interest upon said debentures shall be entitled to payment in the order of their presentation at maturity unless sooner called and paid as provided for in section 2 of this act [2381.4b], otherwise without preference or priority one over the other. [L. '39, Ch. 30, § 1, amending state highway treasury anticipation debentures act of 1938, § 3, initiative measure No. 41, L. '39, p. 743 et seq. Amendment approved and in effect February 17, 1939.]

2381.4d. Same — issuance and sale of debentures constitutes contract between state and legal owner—terms of contract on part of state. The issue and sale of said debentures shall constitute an irrevocable contract between the state of Montana and the legal owner of any of said debentures or coupons attached thereto that the excise or license tax of five cents (5c) a gallon on gasoline or motor fuels or dealers or distributors, as provided in this act or in any of the other laws of the state of Montana thereunto enabling, shall not be reduced nor any part thereof diverted to any other purpose than as at present provided by law, so long as any of said debentures or said coupons remain outstanding and unpaid, and that the state of Montana will cause such taxes to be promptly collected and, after the payment of drawbacks or refunds, the state treasurer shall set aside monthly from the proceeds of said license taxes and pay into a fund to be known as the state highway treasury anticipation debenture interest and redemption fund of 1939, which is hereby created as a separate and distinct fund of the state of Montana, an amount of money collected therefrom equaling one-sixth ($1/6$) of the interest requirements upon said debentures which will fall due upon the next succeeding interest payment date and an amount sufficient to create an adequate sinking fund to pay the redemption price of all outstanding debentures optional for prior payment, provided that such monthly payments for meeting the interest and principal requirements of said debentures shall always be fully sufficient therefor so as to provide ample funds for the prompt payment of the principal amount of all such debentures at the maturity of each thereof and the interest accrued thereon. The

pledge of said license or excise taxes of five cents (5c) a gallon on gasoline or motor fuels and dealers and distributors, as therein and herein provided, shall be irrevocable until all of said debentures and the interest accrued thereon shall have been fully paid and all of said debentures and the interest thereon shall be paid solely from the proceeds of said excise taxes as collected, provided that nothing in this act shall prevent the reduction of such excise taxes when sufficient monies to pay the principal and accrued interest on all of said debentures have been set aside in said highway treasury anticipation debenture interest and redemption fund of 1939, and all monies in said fund shall be retained by the state treasurer as a fund separate and apart from all other state funds and shall be used exclusively for the payment of the principal of and interest upon the debentures issued pursuant to this act. [L. '39, Ch. 30, § 1, amending state highway treasury anticipation debentures act of 1938, § 4, initiative measure No. 41, L. '39, p. 743 et seq. Amendment approved and in effect February 17, 1939.]

2381.4e. Same — sale of debentures — resolution of highway commission — service of copy on state treasurer — advertisement — contents — bids — opening — award — rejection — certified check to be posted by bidders — cost of advertisement. The state highway treasury anticipation debentures herein provided for shall be sold by the state treasurer and the state highway commission to the highest or best bidder for cash at not less than par and accrued interest, and at such times and in such amounts, subject to the limitations herein provided, as may be authorized by said state highway commission by resolution to be entered of record in the minutes of their proceedings.

Immediately upon the passage or adoption by the said state highway commission of such resolution providing for the issuance and sale of any of said debentures, a certified copy of said resolution shall be delivered to the state treasurer who, immediately upon receipt of such copy, shall advertise the time and place of sale by notice published once each week for four (4) consecutive weeks in at least one (1) newspaper published in the city of Helena, Montana, and by one (1) publication in one (1) newspaper published in the city of New York, state of New York, as provided by law. The first publication of such notice shall be made not less than thirty (30) days next preceding the date of sale. Such notice shall state that such sale will be made at the office of the state treasurer of the state of Montana and shall specify the time of such sale. Such notice shall further state the

amount of such debentures to be sold and that the denominations thereof will be made to suit the purchaser, and shall further state that said debentures shall bear interest at a rate not to exceed four per centum (4%) per annum and that sealed bids will be received therefor.

At the time and place stated in said notice the state treasurer and the state highway commission shall open the bids in public and may award said debentures to the bidder or bidders offering to pay the highest price therefor, or offering to purchase said debentures at par and accrued interest at the least rate of interest. The state treasurer and the state highway commission shall have the right to refuse any and all bids and they shall require as security for compliance with the terms of each bid, the deposit of a certified check equal to two per centum (2%) of the bid, drawn on some solvent bank or trust company payable to the order of the state highway treasurer as a guaranty that said debentures will be paid for by the bidder whose bid is accepted. Said certified check and the proceeds therefrom shall be forfeited to the state of Montana in case such bidder fails to make good his bid.

The cost of the advertisement of the sale of any of said debentures shall be paid out of the state highway fund as other claims against said fund are paid. [Initiative measure No. 41, § 5, state highway treasury anticipation debentures act of 1938. Adopted at a state-wide election held November 8, 1938, and became effective by the governor's proclamation November 13, 1938. L. '39, page 743 et seq.]

2381.4f. Same — proceeds of debentures — appropriation. The proceeds received from the sale of said state highway treasury anticipation debentures, except any accrued interest and premium, shall be placed in the state treasury and credited to the state highway fund to be used for the purposes hereinbefore set out, and such proceeds are hereby appropriated to be used for such purposes; provided that any such accrued interest or premium so received shall be deposited by the state treasurer in the said state highway treasury anticipation debenture interest and redemption fund of 1939, to be used for payment of the interest upon and maturing principal of said debentures, respectively, as hereinabove provided. [L. '39, Ch. 30, § 1, amending initiative measure No. 41, § 6, state highway treasury anticipation debentures act of 1938, L. '39, p. 743 et seq. Amendment approved and in effect February 7, 1939.]

2381.4g. Same — public funds — investment in debentures. The state treasurer may, with the approval of the state board of ex-

aminers, and other officials whose approval is required by law for the investment of public funds, purchase such debentures for public investment on a competitive basis with any other bidders. [Initiative measure No. 41, § 7, state highway treasury anticipation debentures act of 1938. Adopted at a state-wide election held November 8, 1938, and became effective by the governor's proclamation November 13, 1938. L. '39, page 743 et seq.]

2381.4h. Same — debentures — acceptance as security for public obligations or deposits of public funds — authorization. The said state highway treasury anticipation debentures may be accepted at their par value by all public officials of the state of Montana as security for the repayment of all deposits of public moneys of the state or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligation or duty to guarantee the performance of which such officials are now authorized by law to accept deposits of the bonds of this state or of the United States of America. [Initiative measure No. 41, § 8, state highway treasury anticipation debentures act of 1938. Approved at a state-wide election November 8, 1938, and became effective by the governor's proclamation November 13, 1938. L. '39, page 743 et seq.]

2381.4i. Same — license tax upon distributors of gasoline — deductions for evaporation or other loss — debentures to be of equal rank. For the purpose of providing funds for the payment of the interest and the maturing principal of the state highway treasury anticipation debentures herein provided for every distributor referred to and defined in the gasoline license tax laws of the state of Montana now in effect shall pay for the year beginning April 1, 1939, and ending March 31, 1940, and each year thereafter until the principal and interest of all debentures issued under the authority of this act shall have been paid, to the state board of equalization for deposit into the state treasury, and excise or license tax for the privilege of engaging in and carrying on such business in this state in an amount equal to five cents (5c) for each gallon of gasoline refined, manufactured, produced or impounded by such distributor and sold by him in this state, or shipped, transported or imported by such distributor into and distributed and sold by him within this state, after it has arrived in and is brought to rest within this state, whether sold in the original package or in the broken packages during such year; provided that all gasoline delivered by any distributor to any of his service stations in this state shall be deemed

to have been sold and shall be treated and considered in computing such license tax in the same manner as though the same had been sold to dealers or to other persons. In making the computation of license tax due and in making payment thereof, two per centum (2%) of the amount of such tax shall be deducted by the distributor as an allowance for evaporation and other loss of gasoline handled by such distributor, and every dealer referred to and defined in the gasoline license tax laws of the state of Montana now in effect, shall, for the year beginning April 1, 1939 and ending March 31, 1940, and each year thereafter until the principal and interest of all debentures issued under the authority of this act shall have been paid, while engaged in such business in this state, pay to the state board of equalization for deposit in the state treasury, a license tax for the privilege of engaging in and carrying on such business in this state, in a sum equal to five cents (5c) for each gallon of gasoline sold or distributed by such dealer in the state during such year; provided, however, that no gasoline sold by such dealer, which was purchased by him from a producer or distributor, who has paid the tax thereon, shall be included or considered in determining the amount of such license tax to be paid by such dealer, but only such gasoline as was shipped, transported or imported into this state and purchased by such dealer before it had arrived in and was brought to rest within this state and then re-sold by such dealer, whether in the original packages or in broken packages, shall be included or considered for the purpose of computing such license tax due, provided that no gasoline exported out of the state of Montana shall be included in the computation of any dealer's license tax herein provided for. Two per centum (2%) of the amount of such tax shall be deducted as an allowance for evaporation and other loss of gasoline handled by such dealer. Except as hereinbefore expressly provided all the covenants herein agreed to be performed by the state of Montana shall be for the equal benefit, protection and security of the legal holders of all such debentures and coupons and all debentures issued hereunder shall be of equal rank without preference, priority or distinction as to the benefit, protection and security of this act, regardless of the maturity of such debentures or of the time or times of their issuance and regardless of any provisions or limitation contained in any existing law of the state of Montana pertaining to the imposition of such gasoline license tax or to the period of time during which same shall be effective. [L. '39, Ch. 30, § 1, amending state highway treasury anticipation debentures act of 1938, § 9, initiative measure

No. 41, L. '39, p. 743 et seq. Amendment approved and in effect February 17, 1939.

2381.4j. Same — title of act. This act shall be known as "The State Highway Treasury Anticipation Debentures Act of 1938." [Initiative measure No. 41, § 11, state highway treasury anticipation debentures act of 1938. Approved at a state-wide election held November 8, 1938, and became effective November 13, 1938, by the governor's proclamation. L. '39, page 743 et seq.]

2381.4k. Same — partial invalidity saving clause. If any section, provision, clause, or phrase of this act be adjudged unconstitutional, or invalid by any court, for any reason, such adjudication shall not affect the validity of this act as a whole, or of any section or provision thereof which is not specifically so adjudged unconstitutional or invalid. [Initiative measure No. 41, § 12, state highway treasury anticipation debentures act of 1938. Approved at a state-wide election held November 8, 1938, and became effective by the governor's proclamation November 13, 1938. L. '39, page 743 et seq.]

2381.4L. Same — effective date of act. This act shall be in full force and effect from and after its passage and approval and proclamation to that effect by the governor, providing the same shall have received a majority of the votes cast for and against it at the election herein called. [Initiative measure No. 41, state highway treasury anticipation debentures act of 1938, § 13. Approved at a state-wide election held November 8, 1938, and became effective by the governor's proclamation November 13, 1938. L. '39, page 743 et seq.]

1939. Words "election herein called," in this section may be treated as surplusage, the act not providing for call of election, and their inclusion does not invalidate the act. *Martin v. State Highway Commissioners*, Mont., 88 P. (2d) 41.

2381.4m. Same — purposes of act — emergency — effective date of amendment. Whereas, in order for the state of Montana to accept and enjoy the benefits of the provisions of acts of congress of the United States in reference to the construction, betterment and maintenance of highways of the state and to assure the ability of the state of Montana to secure monies allocated to the state or to be made available to the state by acts of the congress of the United States for road and highway purposes, it is necessary that the state of Montana provide for the matching of federal aid, and there being no existing law in the state of Montana enabling the state or any of its agencies to promptly and effectively avail itself of such federal aid, it is hereby found,

declared and determined that this act be and the same is hereby declared an emergency measure and shall be in full force and effect from and after its passage and approval. [L. '39, Ch. 30, § 3, amending state highway treasury anticipation debentures act of 1938, initiative measure No. 41. Amendment approved and in effect February 17, 1939.]

Section 2 of the above amending act of L. '39 repeals conflicting laws.

2381.4n. Initiative and referendum — election — highway anticipation debentures — validation. Each and every election heretofore proposed and held by the initiative pursuant to section 1 of article V of the constitution of the state of Montana and the provisions of chapter 13 of the political code of the revised codes of Montana, 1935, and the election laws of the state of Montana, authorizing the issuance of debentures of the state of Montana, providing for the sale thereof for the use of the state highway fund in matching federal highway grants, providing for a tax on gasoline or motor fuels and anticipating revenues therefrom, prescribing the form and conditions of said debentures and the conditions upon which the sale of said debentures may be made and the use of the funds to be derived therefrom, and providing for the creation of a liability binding the state of Montana not to reduce the license tax on gasoline or motor fuel and subject to the further conditions and restrictions expressed therein, and at which elections the proposal to issue such debentures for highway purposes received a majority of all the votes tendered and of the votes cast at such elections upon such propositions, be and the same hereby is legalized, ratified, confirmed and declared valid to all intents and purposes and all such debentures, whether issued or hereafter to be issued, are legalized and declared to be valid and legal obligations of and against the issuing public body regardless of any error, defect, omission, irregularity or departure from said statutes and laws in the holding of and conducting of such elections, or in any of the steps or proceedings relating thereto. [L. '39, Ch. 29, § 1. Approved and in effect February 17, 1939.]

Section 2 repeals conflicting laws.

2381.22. Distribution of proceeds of tax — funds.

1936. ✓ Under this section the highway commission had power to expend money, within the 8 per cent, for the erecting of a building to house the commission. *Guillot v. State Highway Commission*, 102 Mont. 149, 56 P. (2d) 1072.

1936. ✓ The broad authority granted to the highway commissioners to expend money for the construction and maintenance of highways confers on them, by implication, all necessary authority and power to render the granted powers fully efficacious and the

performance of such duties effectual. *Guillot v. State Highway Commission*, 102 Mont. 149, 56 P. (2d) 1072.

2396.3. Construction moneys — allotment — method of determining — on basis of unimproved and uncompleted highway mileage in district. At the start of the fiscal year beginning July 1, 1937, and ending June 30, 1938, the state highway commission shall compute from its records the percentage of uncompleted mileage within each of said districts which each district respectively bears to the total uncompleted mileage of said federal highway system within this state at that time, and for that fiscal year the state highway commission shall use the percentages so computed in allotting to each of said districts construction moneys from the state highway fund as defined and provided by section 2396.2. At the beginning of each fiscal year thereafter the same procedure shall be carried out, and the actual respective percentages of uncompleted mileage in each district as so computed and determined at the beginning of each fiscal year shall be used in allotting said moneys to said districts for that fiscal year. As a basis for the determination of the amount of uncompleted mileage of said federal highway system in this state for each fiscal year, the state highway commission shall adopt as the criterion the current definition, as prescribed by the federal bureau of public roads, for a fully and adequately completed federal highway in this state having proper engineering standards of alignment, width, grades, drainage, and with an oil or dustless surface conforming to said federal requirements. This criterion shall be considered as a one hundred per cent completed federal highway; and federal highway mileage which is only graded, or which is only graded and surfaced with untreated crushed gravel or rock, or which is otherwise only partially completed under the application of this criterion, shall be considered as only partially completed on a percentage basis, this to be determined from the relative estimated percentage costs of construction already performed and of additional construction which must be performed to bring said mileage up to the standard of said criterion.

At the start of the fiscal year beginning July 1, 1939, and ending June 30, 1940, and at the beginning of each fiscal year thereafter the state highway commission shall compute from its records the mileage in each of said districts of totally unimproved mileage and in a like manner the mileage in each district of uncompleted mileage. They shall then compute percentages for each district which the totally unimproved mileage and the uncompleted mileage each respectively bear to the

total of these unimproved and uncompleted mileages in each district. The construction funds then allocated to each of said districts in conformity with section 2396.2 of the revised codes of Montana, 1935, shall be allotted by the state highway commission for the purpose of construction of new highways and the completion or rebuilding of existing highways on the ratio which the unimproved mileage in each district bears to the total uncompleted and unimproved mileage in each district and which the uncompleted mileage bears to the total uncompleted and unimproved mileage in each district, provided, however, in no district shall there be allotted for the purpose of construction of unimproved mileage less than 60% of the moneys allocated from the state highway fund to said district for all construction purposes until such time as the unimproved mileage in said district has been improved. [L. '39, Ch. 213, § 1, amending R. C. M. 1935, § 2396.3, as amended L. '37, Ch. 102, § 1. Approved and in effect March 17, 1939.]

Section 2 repeals conflicting laws.

2396.4. Gasoline tax refund — not used on highways — counties, cities, towns and school districts — showing of claimant — approval of board of equalization — permits for filing claims — record required — suspension of permit — separate invoices. That any person who shall purchase and use any gasoline, with reference to which there has been paid into the treasury of the state of Montana, under the laws of this state licensing dealers in gasoline, a tax at the rate of five cents (5c) per gallon, for the purpose of operating or propelling stationary gas engines, tractors used for purposes other than on the public highways or streets of this state, motor boats, aeroplanes or aircraft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, and who has paid said tax either directly to the state of Montana or indirectly as a part of the purchase price of said gasoline, shall be allowed and paid as a refund or drawback an amount of money equal to five cents (5c) multiplied by the number of gallons of gasoline so purchased and used, provided that counties, incorporated cities, towns and school districts of this state shall be entitled to said refund or drawback of said tax by any such county, city, town or school districts upon gasoline used by it in the performance of any of its governmental and proprietary functions, or either, imposed or authorized by law, including construction, maintenance and repair of all roads, highways and public places within the county limits and all streets, avenues,

alleys and other public places within the corporate limits of such city or town; provided further that such refund or drawback shall in no instance exceed the total amount of the tax paid, or to be paid, to the state of Montana, upon presenting to the board of equalization of the state of Montana, within the time allowed by law, a sworn statement, accompanied by the invoice or invoices issued to the claimant at the time of purchase of such gasoline showing such purchase and use, which statement shall set forth in words and figures, the total amount of the gasoline so purchased, and the purpose for which the same was actually used, the amount of the tax and such additional information as may be required by said board on forms to be furnished by them. All such applications for refunds or drawbacks shall be filed with the board of equalization of the state of Montana within six (6) months after the date on which such gasoline was purchased as shown by such invoices. The said board shall have sixty (60) days thereafter within which to make such investigation as it may desire, to ascertain the truths of the statements made. If the statement is found to be correct and is approved by said board and the state board of examiners, the state auditor shall draw his warrant upon the state treasurer for the amount of such claim and same shall be paid out of the gasoline license tax drawback fund in the same manner as other claims against the state are paid. Such refund or drawbacks shall be made only to, and on the application of, the actual purchaser and user of the gasoline upon which refund is claimed and the burden of establishing the validity of the claim rests upon the claimant.

Should the board of equalization, after investigation, find that the statement so made by said consumer contains errors which, in the opinion of the board were not inserted for the purpose of fraud, it may correct the statement and approve the same as corrected whereupon warrant shall issue, after approval by the state board of examiners, as above provided, or the board may, in its discretion, require the claimant to file an amended statement before action is taken thereon. If upon investigation it shall be determined by the state board of equalization that any claim has been fraudulently presented or is supported, as to any item therein by invoice or invoices fraudulently made or altered in any manner, or that any statement in the claim contained or the affidavit thereto, is wilfully false in any particular and so made for the purpose of misleading said board, the board may reject such claim in toto.

Any person desiring to claim refund on gasoline purchased shall obtain from the state

board of equalization a permit by application therefor on such form as the said board shall prescribe, which application shall be made under oath and shall contain, among other things, the name, address and occupation of the applicant, the nature of the business, and a sufficient description for identification of the machines or equipment in which the taxable motor fuel is to be used for which refund may be claimed under such permit.

Each permit issued shall bear a permit number and each claim filed shall bear the permit number of the claimant. It shall be the duty of the state board of equalization to keep a record of all permits issued and a cumulative record of refund claimed and paid thereunder.

Whenever a claim shall be rejected upon the ground of fraud, as above provided, the state board of equalization may suspend the claimant's permit, for a period not exceeding one year, and no claim shall thereafter be approved or allowed for refund on any gasoline purchased by such claimant during such period of suspension.

When gasoline is sold to a person who shall claim to be entitled to a refund of the tax imposed, the seller of such gasoline shall make and deliver at the time of such sale separate invoices for each purchase on invoice forms approved by the state board of equalization showing the name and address of the seller and the name and address of the purchaser, the number of gallons of gasoline so sold in words and figures and the date of such purchase, which invoice, attached to the claim presented shall be the only proof upon which a legal claim can be made for a refund based upon such purchase. The seller shall retain his duplicate original invoices for the period of one year from and after the date of issuance, during which period they shall be open to inspection by the state board of equalization and its agents. Such invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. [L. '39, Ch. 67, § 1, approved February 27, 1939, amending R. C. M. 1935, § 2396.4, as amended by L. '37, Ch. 96, § 1.

Section 2 repeals conflicting laws.

CHAPTER 217

OIL PRODUCERS' LICENSE TAX

2397. "Person" defined.

1936. Sections 2397-2408 cited in Northern Pac. Ry. Co. v. Gas Development Co., 103 Mont. 214, 62 P. (2d) 204.

2398. Oil producers' license tax—amount—exceptions.

1938. Indians' royalties on oil produced on lands in Blackfeet Indian reservation, held by Indians under trust patent, are not subject to state taxation. Santa Rita Oil & Gas Co. v. Board of Equalization, 101 Mont. 268, 54 P. (2d) 117.

1936. Where, in allotting lands to individual Indians, the trust patents reserved oil and gas for the benefit of the tribe, such lands were subject to the state gross production tax, operators' net proceeds tax, and royalty owners' net proceeds tax on oil produced from such lands, under federal statute approved Feb. 28, 1891, section 3, 26 Stat. 793, giving state the right to tax oil produced on unallotted Indian lands, for as to the oil rights they were unallotted. Santa Rita Oil & Gas Co. v. Board of Equalization, 101 Mont. 268, 54 P. (2d) 117.

1936. In the absence of congressional consent to the imposition of state taxes, so far as the operators' net proceeds tax is concerned, and also the gross production tax, the state of Montana is without authority to impose these two taxes on the production of oil from Indian lands held under a trust patent. Santa Rita Oil & Gas Co. v. Board of Equalization, 101 Mont. 268, 54 P. (2d) 117.

CHAPTER 221

STORE LICENSE TAX

Section

2420.1. to 2420.11. Repealed.

2428. License—application—state board of equalization—contents—application for each store—fees—prepayment.

2428.1. Stores—operation—license—necessity.

2428.3. Same—same—consideration by board—return of application or issuance of license—display of license.

2428.4. Same—expiration date—renewal.

2428.5. Person subject to act—types of business excluded—annual fees—amount.

2428.6. Dealers in certain products—annual license fees—amount.

2428.7. Wholesale stores—wholesale and retail.

2428.8. Licenses—annual—semiannual—rates.

2428.9. Application of act—domestic or foreign merchants—ultimate ownership or management.

2428.10. "Store" defined.

2428.11. Violation of act—penalty.

2428.12. Administration of act—employees—state board of equalization—expenses—money collected—disposition.

2428.13. Partial invalidity saving clause.

2428.14. Repealing clause.

2420.1 to 2420.11. Repealed. [L. '37, Ch. 199, § 13. Approved March 18, 1937; in effect January 1, 1938.

Note. This specific repeal was confirmed in the title to the act of L. '39, Ch. 163, but no specific repeal was mentioned in the body of the act.

2420.1. Stores to procure license.

1936. Initiative ballot on measure to tax stores held defective and not substantially, or at all, meeting the requirements of the law, particularly in that neither the title nor the legend were descriptive of the measure proposed, and that the ballot contained neither

the affirmative nor the negative of the proposed measure, and that no opportunity was afforded the voter to express his will as to whether he was in favor of or opposed to the proposed measure. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. Where an initiative ballot proposed to be submitted to the voters was prepared in disregard of statutory requirements, the supreme court had original jurisdiction to issue an injunction restraining the secretary of state from certifying the measure to county clerks, and the clerks from distributing copies thereof, since the matter was one of vital public interest involving the liberties of the people of the state. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

1936. An operator of licensed chain stores in state could maintain injunction suit to restrain secretary of state from certifying to county clerks, and the clerks from distributing to voters an invalid ballot on an initiative measure to tax chain stores, though store operator failed to allege that it was a taxpayer, since payment of license showed it was a taxpayer and the matter was one of vital public interest. *Sawyer Stores, Inc. v. Mitchell*, 103 Mont. 148, 62 P. (2d) 342.

2428. License — application — state board of equalization — contents — application for each store — fees — prepayment. Any person, firm, corporation, association, co-partnership or group desiring to open, establish, operate or maintain a store in the state of Montana shall apply to the state board of equalization for a license to do so. The application shall be made upon a form which shall be prescribed and furnished by the state board of equalization, and shall set forth the name of the owner, manager, trustee, lessee, stockholders, receiver or other persons desiring said license; the name of such store; the location, including street number; and all such other facts as the state board of equalization may require.

If the applicant desires to open, establish, operate or maintain more than one such store, he shall make a separate application for a license to operate, maintain, open or establish each such store, but the respective stores for which the applicant desires to secure licenses may all be listed upon one (1) application blank.

Each such application shall be accompanied by a filing fee of fifty cents (50c) and by the license fee as prescribed in sections five (5) and six (6) of this act [2428.5, 2428.6]. [L. '39, Ch. 163, § 2. Approved and in effect March 9, 1939.]

2428.1. Stores — operation — license — necessity. That it shall be unlawful for any person, firm, corporation, association or co-partnership, either foreign or domestic, to open, establish, operate or maintain any store or stores in this state without first having obtained a license to do so from the state board of equalization, as hereinafter provided.

[L. '39, Ch. 163, § 1. Approved and in effect March 9, 1939.]

Note. This chapter (L. '39, Ch. 163), sections 2428.1 to 2428.14, is almost an exact re-enactment of L. '37, Ch. 199, with the exception of section 2428.7, although no specific reference is made to the latter statute other than that all acts in conflict therewith are repealed.

2428.3. Same — same — consideration by board — return of application or issuance of license — display of license. As soon as practicable after the receipt of any such application, the state board of equalization shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If, upon examination, the state board of equalization shall find that such application is not in proper form and does not contain the necessary and requisite information, it shall return such application for correction.

If an application is found to be satisfactory, and if the filing and license fee, as herein prescribed, shall have been paid, the state board of equalization shall issue to the applicant a license for each store for which an application for a license shall have been made.

Each licensee shall display the license so issued in a conspicuous place in the store for which such license was issued. [L. '39, Ch. 163, § 3. Approved and in effect March 9, 1939.]

2428.4. Same — expiration date — renewal. All licenses shall be so issued so as to expire upon the thirty-first day of December of each calendar year. On or before the first day of January of each year, every firm, person, corporation, association, co-partnership having a license, shall apply to the state board of equalization for a renewal license for the calendar year next ensuing. All applications for a renewal shall be made upon forms which shall be prescribed and furnished by the state board of equalization.

No license shall lapse prior to the thirty-first day of January of the year next following the year for which the license was issued, and if, by such thirty-first day of January, an application for and a renewal license has not been made, the state board of equalization shall notify such delinquent license holder thereof, by registered mail, and if application is not made for a renewal license issued on or before the last day of February next ensuing, the former license shall lapse and become null and void.

Each such application for a renewal license shall be accompanied by a filing fee of fifty cents (50c) and by the license fee as pre-

scribed in sections five (5) and six (6) of this act [2428.5, 2428.6]. [L. '39, Ch. 163, § 4. Approved and in effect March 9, 1939.

2428.5. Person subject to act—types of business excluded—annual fees—amount. Every person, firm, corporation, association, co-partnership or group opening, establishing, operating or maintaining one or more retail stores or mercantile establishments, within this state, under the same general management, supervision or ownership, where a stock of goods is maintained during any portion of the year, regardless of whether said stock is held by ownership, consignment, agency or any other means, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating, or maintaining such stores or mercantile establishments, provided that the members of any group, association or consumer co-operative composed of independent units owning their own business and grouped or associated together by agreement or otherwise for the purpose of purchasing or selling merchandise or service for the mutual benefit of the members shall not be grouped for computing the license fee to be paid by such person, firm, corporation, association, or co-partnership or retailer under this act, but such units or members shall be taxed as individual units; and provided further, that the term “store” shall not mean or include for the purpose of computing the license fee prescribed in this section the following types of business, but that they shall be licensed under the prescribed fees in section six (6) of this act [2428.6]: Gasoline filling stations and/or gasoline distributing plants where seventy-five per cent. (75%) of the gross business is in petroleum products exclusively; or lumber yards where seventy-five per cent. (75%) of the gross business is in building material and hardware exclusively; or grain elevators where seventy-five per cent. (75%) of the gross business is dealing in grains and seeds exclusively; and those businesses in which the sale of goods, wares, and merchandise is less than twenty-five per cent. (25%) of the gross business.

The license fee herein prescribed shall be paid annually, and shall be in addition to the filing fees prescribed in sections two (2) and four (4) of this act [2428.2, 2428.4].

The annual license fees herein prescribed shall be as follows:

1. Upon one store the annual license fee shall be five dollars (\$5.00).
2. Upon the second store, the annual license fee shall be fifty dollars (\$50.00).
3. Upon the third store, the annual license fee shall be one hundred dollars (\$100.00).

4. Upon the fourth store, the annual license fee shall be one hundred and fifty dollars (\$150.00).

5. Upon the fifth store, and on each store in excess of five stores, the annual license fee shall be two hundred dollars (\$200.00). [L. '39, Ch. 163, § 5. Approved and in effect March 9, 1939.

2428.6. Dealers in certain products—annual license fees—amount. Every person, firm, corporation, association, co-partnership or group opening, establishing, operating or maintaining one or more stores or mercantile establishments within this state under the same general management, supervision or ownership, where a stock of goods is maintained during any portion of the year, regardless of whether said stock is held by ownership, consignment, agency or any other means, who deal in petroleum products, building materials, and hardware and grain elevators, and those businesses in which the sale of goods, wares and merchandise is less than twenty-five per cent. (25%) of the gross business, subject to the following restrictions: Gasoline filling stations and/or gasoline distributing plants where seventy-five per cent. (75%) of the gross business is in petroleum products exclusively; those businesses in which the sale of goods, wares and merchandise is less than twenty-five per cent. (25%) of the gross business; lumber yards where seventy-five per cent. (75%) of the gross business is in building materials and hardware exclusively; grain elevators where seventy-five per cent. (75%) of the gross business is in grains and seeds exclusively, shall pay the annual license fee prescribed in this section for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments, but shall not be required to pay the license fees prescribed in section five (5) of this act [2428.5].

The annual license fees herein prescribed shall be paid annually, and shall be in addition to the filing fees prescribed in sections two (2) and four (4) of this act [2428.2, 2428.4].

The annual license fees herein prescribed shall be as follows:

1. Upon one store the annual license fee shall be five dollars (\$5.00).
2. Upon the second store, the annual license fee shall be seven dollars and fifty cents (\$7.50).
3. Upon the third store, the annual license fee shall be fifteen dollars (\$15.00).
4. Upon the fourth store, the annual license fee shall be twenty-two dollars and fifty cents (\$22.50).

5. Upon the fifth store, the annual license fee shall be thirty dollars (\$30.00).

6. Upon the sixth store, and each store in excess of six (6), the annual license fee shall be thirty-seven dollars and fifty cents (\$37.50). [L. '39, Ch. 163, § 6. Approved and in effect March 9, 1939.]

2428.7. Wholesale stores — wholesale and retail. Wholesale stores shall be taxed in all cases as individual units at the rate of thirty-seven dollars and fifty cents (\$37.50) per unit, regardless of ownership; but, whenever goods, wares, and merchandise are sold regularly at both wholesale and retail from one establishment, the operator thereof shall pay the license fee required under section five (5) or six (6) [2428.5, 2428.6], as the case may be, for the conduct of a retail store, in addition to the wholesale license herein provided for. [L. '39, Ch. 163, § 7. Approved and in effect March 9, 1939.]

2428.8. Licenses — annual — semiannual — rates. Each and every license issued prior to the first day of July of any year shall be charged for at the full rate, and each and every license on or after the first day of July of any year shall be charged for at one-half ($\frac{1}{2}$) of the full rate, as prescribed for in sections five (5), six (6), and seven (7) of this act [2428.5, 2428.6, 2428.7]. [L. '39, Ch. 163, § 8. Approved and in effect March 9, 1939.]

2428.9. Application of act — domestic or foreign merchants — ultimate ownership or management. The provisions of this act shall be construed to apply to every person, firm, corporation, co-partnership or group, either domestic or foreign, which is controlled or held in any degree with others by majority stock ownership or ultimately controlled or directed by one management or association of ultimate management. [L. '39, Ch. 163, § 9. Approved and in effect March 9, 1939.]

2428.10. "Store" defined. The term "store" as used in this act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, association, co-partnership, or group, either domestic or foreign, in which goods, wares or merchandise of any kind are sold, either at retail or wholesale; and subject to the classification contained in sections five (5), six (6), and seven (7) of this act [2428.5, 2428.6, 2428.7]. [L. '39, Ch. 163, § 10. Approved and in effect March 9, 1939.]

2428.11. Violation of act — penalty. Any person, firm, corporation, association, co-

partnership or group who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00), and each and every day that such violation shall continue shall constitute a separate and distinct offense. [L. '39, Ch. 163, § 11. Approved and in effect March 9, 1939.]

2428.12. Administration of act — employees — state board of equalization — expenses — money collected — disposition. The state board of equalization is hereby authorized to employ such clerical and field assistance as may be found necessary to carry out and to administer the provisions of this act. All money collected under the provisions of this act, less the expenses incurred in the administration of this act, shall be paid into the state treasury, to the credit of the general fund. [L. '39, Ch. 163, § 12. Approved and in effect March 9, 1939.]

2428.13. Partial invalidity saving clause. The provisions of this act are several, and if any section, provision, word or clause of this act shall be declared invalid or unconstitutional for any reason, such invalidity or unconstitutionality shall not affect or impair any of the remaining portions of this act. It is hereby declared as the intent of the legislative assembly of Montana that this act would have been adopted had such invalid portion not been included here. [L. '39, Ch. 163, § 13. Approved and in effect March 9, 1939.]

2428.14. Repealing clause. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that such repeal shall not affect any license tax imposed, any rights accrued, any penalty incurred or any action or proceeding commenced and not terminated, under and by virtue of any provision of any act or part of an act so repealed. [L. '39, Ch. 163, § 14. Approved and in effect March 9, 1939.]

CHAPTER 224

HUCKSTERS' LICENSE

Section

2429.10. Hucksters' license—amount.

2429.10. Hucksters' license—amount. Every huckster desiring to do business in any county of this state, must, before commencing such business, pay to the county treasurer of such county, the sum of fifteen dollars (\$15.00) for a license to conduct such business for a period of six months from the date such license

is issued. [L. '37, Ch. 124, § 1, amending R. C. M. 1935, § 2429.10. Approved and in effect March 15, 1937.

Section 2 repeals conflicting laws.

CHAPTER 225

ITINERANT VENDORS' LICENSE

Section

2429.17. Amount of license.

2429.21. Penalty for failure to exhibit license.

2429.17. Amount of license. For the purpose of defraying the expenses of regulation under this act, every itinerant vendor desiring to do business in any county of this state must, before commencing such business, pay to the county treasurer of such county the sum of fifteen (\$15.00) dollars for a license to conduct such business for a period of one (1) year from the date such license is issued. [L. '37, Ch. 109, § 1, amending R. C. M. 1935, § 2429.17. Approved and in effect March 15, 1937.

Section 3 repeals conflicting laws.

2429.21. Penalty for failure to exhibit license. Every such itinerant vendor doing business under the provisions of this act must upon demand of any person exhibit his license and permit the same to then and there be read by the person making such demand; and any such itinerant vendor who shall wilfully refuse or fail to exhibit his license as above provided is guilty of a misdemeanor and shall be fined not less than one hundred (\$100.00) dollars nor more than two hundred fifty (\$250.00) dollars for each offense. [L. '37, Ch. 109, § 2, amending R. C. M. 1935, § 2429.21. Approved and in effect March 15, 1937.

Section 3 repeals conflicting laws.

CHAPTER 225A

ITINERANT MERCHANTS

Section

2429.24. "Itinerant merchant" defined.

2429.25. "Established place of business" defined.

2429.26. Itinerant merchant—persons not included under rubric—person transporting self-produced produce—person having permit of exemption—person transporting his property to or from his established place of business—person transporting property for own use.

2429.27. Persons exempt from act.

2429.28. License required—from commissioner of agriculture.

2429.29. License to engage in business—application—for each vehicle operated—fee.

2429.30. Surety bond—necessity as prerequisite for license—obligation of bond—penal sum.

Section

2429.31. License—issuance—form—display.

2429.32. Same—not transferrable.

2429.33. Same—revocation.

2429.34. Administration of act—rules—commissioner of agriculture to make.

2429.35. Violations of act—seizure of vehicle—authority—keeping in custody.

2429.36. License fees—disposition.

2429.37. Construction of act—amendments or repeals.

2429.38. Violations of act—penalty.

2429.24. "Itinerant merchant" defined. For the purpose of this act, "itinerant merchant" shall mean any person who buys, or offers to buy, or sells, or offers to sell, in this state, at wholesale or retail any produce as defined by section 2443.3 of the revised codes of Montana, 1935, who does not hold a license under the provisions of chapter 229 of the revised codes of Montana, 1935, and transports the same in this state by use of a motor vehicle, or by any other method of transportation, except as herein otherwise provided, or who has not secured the permit of exemption herein provided. [L. '39, Ch. 214, § 1. Approved and in effect March 17, 1939.

2429.25. "Established place of business" defined. "Established place of business", for the purpose of this act, shall mean any permanent warehouse, building, or structure, at which a permanent business is carried on as such in good faith and not for the purpose of evading this act, and at which stocks of the property being transported are produced, stored or kept in quantities reasonably adequate for, and usually carried for, the requirements of such business, and which is recognized, licensed and taxed as a permanent business at such place, and shall not mean residences, tents, temporary stands or other temporary quarters, any railway car, nor permanent quarters occupied pursuant to any temporary arrangement. [L. '39, Ch. 214, § 2. Approved and in effect March 17, 1939.

2429.26. Itinerant merchant—persons not included under rubric—person transporting self-produced produce—person having permit of exemption—person transporting his property to or from his established place of business—person transporting property for own use. The term "itinerant merchant" shall not mean or include the following:

(1) A person using a motor vehicle owned by him, whether operated by him or his agent, for the transportation of produce produced by him on owned or leased premises, when the entire course of such transportation extends not more than one hundred fifty (150) miles from his residence, whether such residence be within or without this state.

(2) Any person handling produce grown by him as herein provided who shall have secured from the commissioner of agriculture, labor and industry before offering any such produce for sale, a permit of exemption. Such permit shall be issued by the commissioner of agriculture upon application and payment of a fee of one dollar (\$1.00), provided the applicant shall, in the discretion of the commissioner of agriculture, be able to satisfactorily show that he will sell, or offer for sale, only produce of his own production; and when and if issued shall permit the sale of only such produce, and shall be forfeited at any time the holder of such permit of exemption shall sell, or offer to sell any produce not of his own production.

(3) A person transporting property owned by him in a motor vehicle owned by him, whether operated by him or his agent, when such transportation is incident to a business conducted by him at an established place of business operated by him, either within or without this state, and when said property is being transported to or from an established place of business, operated by him in this state.

(4) A person transporting property for his own consumption or use and not for sale. [L. '39, Ch. 214, § 3. Approved and in effect March 17, 1939.]

2429.27. Persons exempt from act. No person shall be exempt from the requirements of this act unless he or the driver of the motor vehicle upon which his property is being transported, shall, upon the request of any peace officer or any person charged with the enforcement of this act, including all employees of the department of agriculture, labor and industry, execute an affidavit containing such facts as the commissioner of agriculture may, in his discretion, require, and deliver the same to said peace officer or such employee. Such affidavit must clearly show that the person claiming the exemption is entitled to one or more of the exemptions provided in this act. [L. '39, Ch. 214, § 4. Approved and in effect March 17, 1939.]

2429.28. License required — from commissioner of agriculture. No person shall engage in business as an itinerant merchant, as defined by this act, without obtaining from the commissioner of agriculture the license herein required. [L. '39, Ch. 214, § 5. Approved and in effect March 17, 1939.]

2429.29. License to engage in business — application — for each vehicle operated — fee. An application for a license to engage in business as an itinerant merchant shall be

made to the commissioner of the department of agriculture, labor and industry upon forms to be prepared by him.

A separate application and license shall be required for each motor vehicle to be operated. Such application shall contain such facts as the commissioner of agriculture shall require. The fee for each license shall be one hundred dollars (\$100.00) for the calendar year in which it is issued, and each license shall expire at the end of the calendar year in which issued. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant. [L. '39, Ch. 214, § 6. Approved and in effect March 17, 1939.]

2429.30. Surety bond — necessity as prerequisite for license — obligation of bond — penal sum. No license shall be issued until the applicant shall have filed with each application, and the same has been approved by the commissioner of agriculture, a surety bond issued by a company authorized to do business in the state in the penal sum of not less than one thousand dollars (\$1,000), in such form as may be prescribed by the commissioner of agriculture conditioned upon the delivery of honest weights, measures, or grades, accurate representation as to quality or class of produce, the actual payment of checks, drafts or other obligations delivered by the itinerant merchant in exchange for the purchase of such produce, and the payment of all obligations incurred by him for the purchase of the same. [L. '39, Ch. 214, § 7. Approved and in effect March 17, 1939.]

2429.31. License — issuance — form — display. Upon the approval of the application and bond and upon compliance with the terms of this act, the commissioner of agriculture, labor and industry shall issue to the applicant a license as an itinerant merchant in such form as the commissioner of agriculture may prescribe. Such license shall at all times be carried by the driver of the motor vehicle described and shall at all times be subject to inspection by any person. [L. '39, Ch. 214, § 8. Approved and in effect March 17, 1939.]

2429.32. Same — not transferrable. No license issued pursuant to this act may be sold or transferred, and no license may be transferred from one vehicle to another, without the written consent of the commissioner of agriculture. [L. '39, Ch. 214, § 9. Approved and in effect March 17, 1939.]

2429.33. Same — revocation. Upon such notice and hearing as the commissioner of agriculture may deem proper, he may revoke

any license issued under the provisions of this act for failure to comply with any of the laws of this state. [L. '39, Ch. 214, § 10. Approved and in effect March 17, 1939.

2429.34. Administration of act — rules — commissioner of agriculture to make. The commissioner of agriculture, labor and industry shall make and enforce such rules for the administration of this act as he may deem necessary and proper. [L. '39, Ch. 214, § 11. Approved and in effect March 17, 1939.

2429.35. Violations of act — seizure of vehicle — authority — keeping in custody. Any motor vehicle operated in violation of this act shall be kept in the custody of any person authorized to enforce any of the laws of this state, or in the custody of any person authorized to enforce this act including all employees of the department of agriculture, labor and industry, and shall not be operated except under his or their authority and solely for the purpose of taking it to the nearest convenient place of custody, until the provisions of this act have been complied with. [L. '39, Ch. 214, § 12. Approved and in effect March 17, 1939.

2429.36. License fees — disposition. All sums received from license fees under this act by the commissioner of agriculture, shall be by him deposited with the state treasurer, and shall be used to defray the cost of administration and enforcement of this act. [L. '39, Ch. 214, § 13. Approved and in effect March 17, 1939.

2429.37. Construction of act — amendments or repeals. Nothing in this act shall be construed to repeal or amend any statute delegating authority to any county or municipal corporation to license, tax, or regulate peddlers or itinerant merchants. This act shall not be construed as repealing or amending any of the provisions of chapter 229 of the revised codes of Montana, 1935. [L. '39, Ch. 214, § 14. Approved and in effect March 17, 1939.

2429.38. Violations of act — penalty. Any person violating any provision of this act shall be guilty of a misdemeanor, and shall upon conviction thereof, be punished by a fine of not less than twenty-five dollars (\$25.00) and not more than two hundred dollars (\$200.00). [L. '39, Ch. 214, § 15. Approved and in effect March 17, 1939.

Section 16 is partial invalidity saving clause.

CHAPTER 227

PUBLIC CONTRACTORS' LICENSES

Section

2433.5. Classes of licenses — rights granted under licenses—fees—when license not required.

2433.6. Investigation of applicant and granting of license— renewals — fees — application — change in class of license—duration of license.

2433.5. Classes of licenses — rights granted under licenses — fees — when license not required. There shall be three classes of licenses issued under the provisions of this act; and such classes of licenses are hereby designated as classes A, B, and C. Any applicant for a license under the provisions hereof, shall specify in his application the class of license applied for.

The holder of a class A license shall be entitled to engage in the public contracting business within the state of Montana without any limitation as to the value of a single public contract project, subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in section 1 (b) hereof, and at the time of making the application for such license the applicant shall pay to the registrar a fee in the sum of two hundred dollars (\$200.00).

The holder of a class B license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of fifty thousand dollars (\$50,000.00); and shall pay unto the registrar as a license fee the sum of one hundred dollars (\$100.00) for such class B license at the time of making application therefor.

The holder of a class C license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of twenty-five thousand dollars (\$25,000.00); and shall pay unto the registrar as a license fee the sum of ten dollars (\$10.00) at the time of making application therefor.

Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than one thousand dollars (\$1000.00), nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States; neither shall a successful bidder be required to be licensed as provided herein before the award-

ing and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved. [L. '39, Ch. 113, § 1, amending R. C. M. 1935, § 2433.5. Approved and in effect March 3, 1939.

Section 2 repeals conflicting laws.

2433.6. Investigation of applicant and granting of license — renewals — fees — application — change in class of license — duration of license. It shall be the duty of the registrar to investigate and determine the applicant's fitness to act in the capacity of public contractor, as defined in this act, and no license shall be issued unto such applicant until the expiration of ten (10) days from and after the filing of such application. The license so issued in pursuance of the first application shall entitle the licensee to act as a public contractor within this state, subject to the limitations of such license, until the expiration of the then current calendar year.

Any license issued under the provisions of this act may be renewed for each successive calendar year by obtaining from the registrar a certificate of renewal thereof. For the purpose of obtaining such certificate of renewals, the licensee shall file with the registrar an application therefor, stating the class of license applied for and containing the same information as that required in the application for the original license. The application for such certificate of renewal must be made to the registrar on or before the first day of March of each successive calendar year; and such renewal certificate shall be good for the then current calendar year.

At the time of filing the application for a certificate of renewal, the applicant shall pay unto the registrar a license fee equal to fifty (50) per cent of the license fee for the original license; provided that if any applicant for a certificate of renewal shall apply for a renewal under a different class from the license theretofore issued to him, such new license shall only be issued upon the same showing and under the same terms and conditions and upon payment of the same fee required for the issuance of an original license.

All certificates of renewal, wherein the applicant does not apply for a change in the class of license shall be issued by the registrar to the applicant forthwith when the application is filed and the license renewal fee paid. [L. '37, Ch. 113, § 1, amending R. C. M. 1935, § 2433.6. Approved and in effect March 15, 1937.

Section 2 repeals conflicting laws.

CHAPTER 228

MISCELLANEOUS LICENSES

Section

2435.1-2435.4. Repealed.

2439.1. Movie theatres—license required.

2439.2. Same — license — application — form — contents—separate license for each theatre of same operator.

2439.3. Same — same — issuance — state board of equalization — display.

2439.4. Same—same—renewable quarterly.

2439.5. Same—same—fees—when payable—amount.

2439.6. Same—same—violations of act—penalty.

2439.7. Same — same — board of equalization — expenses — how paid — surplus from fees — disposition.

2439.8. Same—same—fees—exemptions.

2434. Billiard tables — pawnbrokers — theaters — intelligence officers — shooting gallery.

1937. ✓ A statute which groups movie theaters in a class by themselves and apart from other forms of entertainment, such as vaudeville theaters, for the purpose of imposing license taxes, does not make an arbitrary classification in the absence of a showing that there are any exclusively vaudeville theaters in the state, and if so they are taxed under another statute, *State ex rel. Griffin v. Greene*, 104 Mont. 460, 67 P. (2d) 995, since there exists such a substantial difference between the two classes as to justify classification in different categories.

2435.1-2435.4. Repealed. That sections 2435.1, 2435.2, 2435.3 and 2435.4 of the revised codes of Montana of 1935, be, and the same are hereby repealed. [L. '39, Ch. 4, § 1. Approved February 7, 1939; in effect December 31, 1939.

2439.1. Movie theatres—license required. It shall be unlawful for any person, firm, corporation, association or copartnership, either foreign or domestic, to operate, maintain, open or establish any movie theatre, without first having obtained a license to do so from the state board of equalization as hereinafter provided. [L. '37, Ch. 91, § 1. Approved March 12, 1937; in force July 1, 1937.

1937. ✓ Under the first five sections of this act it was compulsory for the state board of equalization to issue licenses to all applicants making proper application, on July 1, 1937, and without the payment of any fees, for, since the act is not made retroactive, there was at that time no tax prescribed by the act, since the fees payable on each quarterly renewal are based on the gross proceeds of the preceding quarter, above the exemption of \$3.00. *State ex rel. Griffin v. Greene*, 104 Mont. 460, 67 P. (2d) 995.

1937. ✓ Sections 2439.1 et seq. held not invalid as changing the purpose of the original bill as introduced in the legislature. *State ex rel. Griffin v. Greene*, 104 Mont. 460, 67 P. (2d) 995.

1937. ✓ A statute which groups movie theaters in a class by themselves and apart from other forms of entertainment, such as vaudeville theaters, for the purpose of imposing license taxes, does not make an arbitrary classification in the absence of a showing

that there are any exclusively vaudeville theaters in the state, and if so they are taxed under another statute, *State ex rel. Griffin v. Greene*, 104 Mont. 460, 67 P. (2d) 995, since there exists such a substantial difference between the two classes as to justify classification in different categories.

2439.2. Same — license — application — form — contents — separate license for each theatre of same operator. That any person, firm, corporation, association or copartnership desiring to operate, maintain, open or establish a movie theatre in this state shall apply to the state board of equalization for a license to do so. The application for a license shall be made on a form which shall be prescribed and furnished by the state board of equalization, and shall set forth the name of such movie theatre, the owner, manager, trustee, lessee, receiver or other person desiring such license; the location, including the street number of such movie theatre, and other such facts as the state board of equalization may require. If the applicant desires to operate, maintain, open or establish more than one such movie theatre, he shall make a separate application for a license to operate, maintain, open or establish each such movie theatre. [L. '37, Ch. 91, § 2. Approved March 12, 1937; in force July 1, 1937.]

2439.3. Same — same — issuance — state board of equalization — display. As soon as practicable after the receipt of any such application, the state board of equalization may, if the application is found to be satisfactory and if the license fees as herein prescribed shall have been paid, issue to the applicant a license for such movie theatre, for which an application for a license shall have been made. Each licensee shall display the license so issued in a conspicuous place in the movie theatre for which said license is issued. [L. '37, Ch. 91, § 3. Approved March 12, 1937; in force July 1, 1937.]

1937. ✓ The words "may issue," in this section mean "must issue," if the conditions prescribed have been complied with, the only discretion in the board being, first, to ascertain whether the application is satisfactory, and second, whether the license fee has been paid. *State ex rel. Griffin v. Greene*, 104 Mont. 460, 67 P. (2d) 995.

2439.4. Same — same — renewable quarterly. All licenses shall be issued quarterly on the first day of April, July, October and January. On or before the first day of each such quarter every person, firm, corporation, association or copartnership coming under the provisions of this act shall apply to the state board of equalization for a renewal of such license. [L. '39, Ch. 91, § 4. Approved March 12, 1937; in force July 1, 1937.]

2439.5. Same — same — fees — when payable — amount. Every person, firm, corpora-

tion, association or copartnership, opening, establishing, operating or maintaining moving picture theatres within the state under the same management, supervision or ownership, shall pay the license fees hereafter [hereinafter] prescribed for the privilege of establishing, operating or maintaining such movie theatres. The license fees herein prescribed shall be paid annually.

The license fees herein prescribed are payable quarterly on the first day of April, July, October and January of each year and shall be as follows:

One and one quarter (1¼) per centum of the gross proceeds from the sale of tickets of admission in excess of the sum of three thousand dollars (\$3,000.00) per quarter. [L. '37, Ch. 91, § 5. Approved March 12, 1937; in force July 1, 1937.]

1937. ✓ The statement in this section that "the fees herein prescribed shall be paid annually" was in the bill as originally introduced, but as finally passed the tax was made payable quarterly, allowing quarterly exemptions of \$3,000 inadvertently leaving the former provision in the statute. Since the provisions requiring payments quarterly are specific and the provision providing for annual payment is general, the former control. *State ex rel. Griffin v. Greene*, 104 Mont. 460, 67 P. (2d) 995, holding, also, that an obvious error of the legislature may be corrected by the courts to carry out the manifest intent of the legislature.

1937. ✓ A statute which imposes on all individuals of a class the same amount of license tax exemption, and the same rate of taxation on gross receipts above the exemption, does not violate the uniformity provisions of the constitution. *State ex rel. Griffin v. Greene*, 104 Mont. 460, 67 P. (2d) 995.

1937. Section 2439.5 held not violative of the equal protection and due process clauses of the state and federal constitutions. *State ex rel. Griffin v. Greene*, 104 Mont. 460, 67 P. (2d) 995.

1937. ✓ The owner of a single movie theater cannot, in a proceeding to enjoin the enforcement of sections 2439.1 et seq., on the ground that the method of taxation is arbitrary and unreasonable as against owners of chain theaters, under the rule that only those adversely affected by an alleged discriminatory act will be heard to question its validity. *State ex rel. Griffin v. Greene*, 104 Mont. 460, 67 P. (2d) 995.

1937. ✓ One challenging the classification of a statute on the ground that it is arbitrary and unreasonable has the burden of so proving. *State ex rel. Griffin v. Greene*, 104 Mont. 460, 67 P. (2d) 995.

2439.6. Same — same — violations of act — penalty. Any person, firm, corporation, copartnership, or association who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500.00), and no such license shall be issued to the violator for a period of three (3) years next succeeding the conviction. [L. '37, Ch. 91, § 6. Approved March 12, 1937; in force July 1, 1937.]

2439.7. Same — same — board of equalization — expenses — how paid — surplus from fees — disposition. Any and all expense incurred by the state board of equalization in the administration of this act shall be paid out of the funds accruing from the fees imposed by and collected under the provisions of this act. License fees, except expenses incurred, shall be paid by the state board of equalization to the state treasurer and the state treasurer shall deposit all of said fees into the general fund. [L. '37, Ch. 91, § 7. Approved March 12, 1937; in force July 1, 1937.]

2439.8. Same — same — fees — exemptions. No such license fee shall be collected from any school, church, or charitable organization. [L. '37, Ch. 91, § 8. Approved March 12, 1937; in force July 1, 1937.]

Section 9 is partial invalidity saving clause.
Section 10 repeals conflicting laws.

CHAPTER 229

PRODUCE WHOLESALERS' LICENSE

2443.3. Definitions.

Note. This section is not applicable to hay. See § 2649.1m.

Note. This section shall not apply to hay. See § 3649.10.

CHAPTER 230

STATE, LOCAL, AND COUNTY BOARDS OF HEALTH

Section

- 2484.1. Division of industrial hygiene—creation—personnel.
- 2484.2. Same—powers of division.
- 2484.3. Same—occupational diseases—blanks for reporting.
- 2484.4. Same—same—investigations.
- 2484.5. Same—same—periodic reports—dissemination.
- 2484.6. Same—same—definitions.
- 2484.7. Same—same—reports of physicians—duty—inspection of reports—admissibility in hearing under workmen's compensation act.
- 2484.8. Same—same—reports—failure to make—false statements—penalty.

2484.1. Division of industrial hygiene—creation—personnel. There is hereby created and established within the state board of health of the state of Montana a division of industrial hygiene. The members of the state board of health shall be ex-officio members of such division, and the secretary of the state board of health shall be ex-officio secretary of said division. [L. '39, Ch. 127, § 1. Approved and in effect March 9, 1939.]

2484.2. Same—powers of division. The division of industrial hygiene shall have the following powers:

(1) To make studies of industrial hygiene and occupational disease problems in the industries of Montana;

(2) To keep and maintain complete records of its studies, recommendations and other activities;

(3) To make investigations of the sanitary conditions under which the men and women work in the various industries of the state;

(4) To make and enforce regulations for the correction of unsanitary conditions found;

(5) To report to the industries concerned the findings of such investigations and to work with such industries to remedy unsanitary conditions;

(6) To employ such help as may be necessary to make the investigations and enforce the regulations and as is justified by the appropriation. [L. '39, Ch. 127, § 2. Approved and in effect March 9, 1939.]

2484.3. Same — occupational diseases — blanks for reporting. The secretary of the division of industrial hygiene is hereby authorized and directed to design and provide suitable blanks for reporting occupational diseases and prepare instructions for their use, and to furnish them free of charge to all registered physicians, medical clinics, hospitals, industrial plants and labor unions who may request them. [L. '39, Ch. 127, § 3. Approved and in effect March 9, 1939.]

2484.4. Same — same — investigations. Whenever the secretary of the division of industrial hygiene receives a report that there is within the state of Montana a case of occupational disease, or a death caused by occupational disease, he may cause an investigation to be made to determine the authenticity of the report and the cause of the disease. [L. '39, Ch. 127, § 4. Approved and in effect March 9, 1939.]

2484.5. Same — same — periodic reports — dissemination. Once each year and at such other times as is deemed proper, the division of industrial hygiene shall compile statistical summaries of all occupational diseases reported, together with the type of employment leading to the occurrence of such diseases and shall disseminate to all employers of this state instructions and information deemed proper and expedient to prevent the occurrence or recurrence of occupational diseases. [L. '39, Ch. 127, § 5. Approved and in effect March 9, 1939.]

2484.6. Same — same — definitions. An occupational disease, for the purpose of this statute, is an illness of the body which has the following characteristics:

(1) It arises out of and in the course of the patient's occupation.

(2) It is caused by a frequently repeated or a continuous exposure to a substance or to a specific industrial practice which is hazardous and which has continued over an extended period of time.

(3) It presents symptoms characteristic of an occupational disease which is known to have resulted in other cases from the same type of specific exposure.

(4) It is not the result of ordinary wear and tear of industrial occupation or the general effect of employment or the kind of illness that results from contacts or activities in life outside of the patient's occupational pursuits. [L. '39, Ch. 127, § 6. Approved and in effect March 9, 1939.]

2484.7. Same — same — reports by physicians — duty — inspection of reports — admissibility in hearing under workmen's compensation act. From and after the passage and approval of this act, every physician, hospital or clinic superintendent, and the state coal and quartz mine inspectors, having knowledge of a case of occupational disease shall, upon request of the secretary of the division of industrial hygiene of the state of Montana, and within ten (10) days after such request, report the same to the division of industrial hygiene of the state of Montana on a form provided by said division, giving the name and address of the patient, the name and business address of the employer or employers, the business of the employer, the place of the patient's employment, the length of time of his employment in the place where he took ill, the nature of the disease, and any other information required by the division of industrial hygiene. All such reports and all records and data of the division of industrial hygiene of the state of Montana pertaining to such diseases are hereby declared not to be public records or open to public inspection, and shall not be admissible as evidence in any action at law or in any hearing under the workmen's compensation act of the state of Montana. [L. '39, Ch. 127, § 7. Approved and in effect March 9, 1939.]

2484.8. Same — same — reports — failure to make — false statements — penalty. Any physician, surgeon, hospital or clinic superintendent in charge of a hospital or of clinic records, or any other person required to make such report hereunder, who shall fail to make any report required under the provisions of

this act, or who shall wilfully make any false statement in such report, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than five hundred dollars (\$500.00). [L. '39, Ch. 127, § 8. Approved and in effect March 9, 1939.]

Section 9 repeals conflicting laws.

CHAPTER 232

CHILD WELFARE DIVISION OF STATE BOARD OF HEALTH — MONTANA ORTHOPEDIC COMMISSION

Section

2511-2514. Repealed.

2511-2514. Repealed. See § 349A.76.

CHAPTER 237A

FOOD DISTRIBUTORS LAW OF 1939

Section

- 2599.1. Definitions.
- 2599.2. Board of food distributors—personnel.
- 2599.3. Board — members — appointment— terms —vacancies—activity in food distribution —removal.
- 2599.4. Same — same — recommendations — Montana state food distributors association.
- 2599.5. Same—officers—election.
- 2599.6. Same—powers and duties.
- 2599.7. Same—meetings.
- 2599.8. Same—members—compensation—expenses.
- 2599.9. Same — secretary — compensation — expenses — bond.
- 2599.10. Food stores—registration—licenses—display —necessity.
- 2599.11. Same — same — same — suspension or revocation—refusal to renew—hearing—appeal.
- 2599.12. Quality of food sold—adulteration—who is responsible—application of Montana pure food and drug act.
- 2599.13. Fees to be deposited with treasurer—fines—disposition — salaries and expenses of board — source of payment — warrants—treasurer's bond.
- 2599.14. State food distributors' association—payments to, by board.
- 2599.15. Attorney general to be attorney for board—prosecutions—secretary to assist in enforcement—duties of county attorneys.
- 2599.16. License—posting in store—inspection.
- 2599.17. Violations of act—penalties.
- 2599.18. Title of act.

2599.1. Definitions. As used in this act—

(a) The term "food store" shall mean a grocery store, restaurant, pool hall, hotel, or other established place regularly licensed by the state board of food distributors, in which food or drinks are compounded, dispensed, vended, or sold at retail.

(b) The term "food" shall mean all substances, drinks, and preparations other than drugs, offered for sale and intended for human consumption.

(c) The term "board" or "state board of food distributors" shall mean the Montana state board of food distributors.

(d) The term "secretary" shall mean the secretary of the Montana state board of food distributors.

(e) The word "person" shall be construed to include every individual, co-partnership, corporation or association, unless the context otherwise requires.

(f) Masculine words shall include the feminine and neuter and the singular includes the plural. [L. '39, Ch. 49, § 1. Approved and in effect February 22, 1939.]

2599.2. Board of food distributors — personnel. The Montana state board of food distributors shall consist of three (3) food distributors, each of whom shall have had at least five (5) consecutive years of practical experience in Montana as a food distributor immediately preceding his appointment, and shall be actively engaged in the distribution of food. [L. '39, Ch. 49, § 2. Approved and in effect February 22, 1939.]

2599.3. Board — members — appointment — terms — vacancies — activity in food distribution — removal. The members of the board shall be appointed by the governor, one in each year, each to serve for a term of three (3) years and until his successor shall have been appointed and qualified. Vacancies shall be filled by appointment for the unexpired term. Any member of the board who, during his incumbency, ceases to be actively engaged in the distribution of food in this state, shall be automatically disqualified from membership. Any member may be removed from office by the governor upon proof of malfeasance or misfeasance in office. The members of the Montana state board of food distributors heretofore appointed and now holding office shall continue until their respective terms expire. [L. '39, Ch. 49, § 3. Approved and in effect February 22, 1939.]

2599.4. Same — same — recommendations — Montana state food distributors association. The Montana state food distributors association shall recommend five (5) names for each appointment to be made, from which list the governor shall elect. [L. '39, Ch. 49, § 4. Approved and in effect February 22, 1939.]

2599.5. Same — officers — election. The board shall annually elect from its members a president, a vice-president, a treasurer, and a

secretary, who may or may not be a member. [L. '39, Ch. 49, § 5. Approved and in effect February 22, 1939.]

2599.6. Same — powers and duties. (a) To regulate the quality of all food sold at retail in this state, using the state and federal pure food and drug act as the standard.

(b) It may, by its duly authorized representative, enter and inspect any and all places where food is sold, vended, given away, or manufactured. It shall be unlawful for any person to refuse to permit or otherwise prevent such representative from entering such places and making such inspection.

(c) To report its proceedings annually to the governor with such information and recommendations as it deem proper, giving the names of all food stores licensed during the year and the items of the receipts and disbursements.

(d) To employ necessary assistants, and make rules for the conduct of its business.

(e) To perform such other duties and exercise such other powers as the provisions of the act may require.

(f) For the purposes aforesaid, it shall also be the duty of the board to make and publish uniform rules and regulations not inconsistent herewith, for carrying out and enforcing the provisions of the act. [L. '39, Ch. 49, § 6. Approved and in effect February 22, 1939.]

2599.7. Same — meetings. The board shall meet at least once every six months for the purpose of transacting its business. [L. '39, Ch. 49, § 7. Approved and in effect February 22, 1939.]

2599.8. Same — members — compensation — expenses. Each member of the board shall receive ten dollars per day for his actual services as such, and his necessary expenses in attending meetings. [L. '39, Ch. 49, § 8. Approved and in effect February 22, 1939.]

2599.9. Same — secretary — compensation — expenses — bond. The secretary shall receive a salary to be fixed by the board and all expenses necessarily incurred by him in the performance of his duties. He shall give such a bond as the board may from time to time require, which bond shall be approved by the board. [L. '39, Ch. 49, § 9. Approved and in effect February 22, 1939.]

2599.10. Food stores — registration — licenses — display — necessity. The state board of food distributors shall require and provide for the annual registration and licensing of every food store now or hereafter doing business within this state. Upon the payment of a fee of two dollars, the board shall issue a

license and provide the insignia designating such store a "certified food store" by the state board of food distributors, to such persons as may be qualified by law to conduct a food store provided such license shall be exposed in a conspicuous place in the food store for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct a food store unless such license has been issued to him by the board. [L. '39, Ch. 49, § 10. Approved and in effect February 22, 1939.]

2599.11. Same — same — same — suspension or revocation — refusal to renew — hearing — appeal. The board may suspend, revoke or refuse to renew any registration or license obtained by false representation or fraud, or when the person to whom license or registration shall have been granted has been convicted for violation of any of the provisions of this act, or for a felony. Before any license can be revoked, the holder thereof shall be entitled to a hearing by the board, upon due notice of the time and place where such hearing shall be held. The accused may be represented by legal counsel, shall be entitled to compulsory attendance of witnesses and shall have the right of appeal to the district court of the proper county on the question of law and fact. [L. '39, Ch. 49, § 11. Approved and in effect February 22, 1939.]

2599.12. Quality of food sold — adulteration — who is responsible — application of Montana pure food and drug act. (a) Every proprietor or manager of a food store shall be responsible for the quality of all food sold therein, except for articles sold in the original package of the manufacturer.

(b) It shall be unlawful for any person or his agent to adulterate any food, or mix any foreign or inert substance with food, for the purpose of adulteration or cheapening same.

(c) Nothing in this act shall be construed to change any of the provisions of the pure food and drug act of Montana, being chapter 237 of the revised codes of Montana of 1935. [L. '39, Ch. 49, § 12. Approved and in effect February 22, 1939.]

2599.13. Fees to be deposited with treasurer — fines — disposition — salaries and expenses of board — source of payment — warrants — treasurer's bond. All fees received by the state board of food distributors under this act shall be deposited with treasurer of the board. In enforcing any and all laws affecting or pertaining to food stores licensed herein, all fines paid under the provisions of this act or in connection with the enforcement of this act or any other act concerning food stores or in

connection with the enforcement thereof, shall be paid to the credit of the common school fund of the state of Montana, provided that no salary or expenses of the board of food distributors shall be paid out of the state treasury. No expenses shall be incurred by said board in excess of the revenue derived from such fees. All expenditures of said board and all expenses necessarily incurred thereby in exercise of its powers or the performance of its duties under this act, shall be paid out of said fund in hands of treasurer of the board. Payments out of said fund shall be made only by warrant or order on said funds drawn by the secretary and countersigned by the president of the state board of food distributors. The treasurer shall give such bond as the board may from time to time require. [L. '39, Ch. 49, § 13. Approved and in effect February 22, 1939.]

2599.14. State food distributors' association — payments to, by board. The board shall, in each year, turn over to the Montana state food distributors association for the advancement of the science, sanitation and public health in food distribution, and for the enforcement of this or any other law relating to food stores, out of the annual fees collected by it, such sum as it may deem advisable, but not less than one dollar for each store which shall have paid its renewal fee during such year. [L. '39, Ch. 49, § 14. Approved and in effect February 22, 1939.]

2599.15. Attorney general to be attorney for board — prosecutions — secretary to assist in enforcement — duties of county attorneys. The attorney general of the state of Montana shall be the attorney for the Montana state board of food distributors but said board may employ other counsel. The secretary of the Montana state board of food distributors shall, under such rules and regulations as the board may prescribe, assist the board and the attorney general in the administration and enforcement of this act. It shall be the duty of the county attorney of the county wherein any offense hereunder is committed to prosecute the offender. Such prosecutor is authorized to examine the books of any manufacturer, druggist, store-keeper, or wholesale dealer within the state for the purpose of acquiring information to aid in the prosecution. [L. '39, Ch. 49, § 15. Approved and in effect February 22, 1939.]

2599.16. License—posting in store—inspection. Any person, persons, firm or corporation, which, under this act, are required to have a license, shall at all times have such license posted in a conspicuous place in their place of business and shall have the same at

all times available for inspection and examination by any person or citizen of the state of Montana. [L. '39, Ch. 49, § 16. Approved and in effect February 22, 1939.]

2599.17. Violations of act—penalties. Any person violating any of the provisions of this act or rules and regulations hereunder, shall be guilty of a misdemeanor, unless otherwise provided. [L. '39, Ch. 49, § 17. Approved and in effect February 22, 1939.]

2599.18. Title of act. The title of this act shall be the food distributors law of 1939. [L. '39, Ch. 49, § 19. Approved and in effect February 22, 1939.]

Section 18 of act is partial invalidity saving clause.

Section 20 fixes effective date of act.

CHAPTER 240

REGULATION OF PRODUCTION AND SALE OF DAIRY PRODUCTS

Section

- 2620.4. Definitions of terms.
- 2620.20. Location and construction of creameries, cheese factories, ice cream factories and ice cream mix factories—sanitary conditions—meat—storage—steam boiler—hot water—steam—concrete floors—walls—ceilings—equipment—can washer—ice cream freezers in stores—ventilation and lighting—screens.
- 2620.34. Butter—how wrapped—name of maker—weight—on package.
- 2620.49. Pasteurization defined—process.
- 2620.70. Regulations for sale of butter—content of milk fat.
- 2620.71. Wholesale butter and cheese dealers' license—license for place of business—sanitation.
- 2620.72. Condemnation of unfit containers of milk and cream.
- 2634.1. Egg dealers' license—fee.
- 2634.5. Certificate of candling.
- 2634.6. Eggs defined as unfit for human food.
- 2634.7. Imported eggs—labeling "imported eggs"—signs.
- 2634.8. Notice to purchaser of grade of eggs.
- 2634.9. Invoice to show grade of eggs.
- 2634.11. Violations of act—penalties.
- 2634.12. Montana state egg seal.
- 2634.13. Licensed egg graders.
- 2634.14. Revocation of license.
- 2634.15. Funds derived from license fees and sale of egg seals—disposition.

2620.4. Definitions of terms. For the purpose of this act, the following definitions are hereby adopted:

Butter is the clean, non-rancid product made by gathering in any manner, the fat of fresh ripened milk or cream into a mass which also contains a small portion of the other milk constituents, with or without salt, and must

contain not less than eighty per centum of milk fat. No tolerance for any deficiency in milk fat shall be permitted. Butter may also contain added coloring matter.

Renovated butter or process butter is the product made by melting and reworking, without the addition or use of chemicals or any substances except whole milk, cream or salt, and must contain not less than eighty per centum of milk fat.

Cheese is the sound, solid, and ripened product made from milk or cream by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning, and must contain in the water free substance, not less than fifty per centum of milk fat, and not more than thirty-nine per centum of moisture. Cheese may also contain added coloring matter.

Skimmed milk cheese is the sound, solid and ripened product made from skim milk by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning.

Ice cream is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, or wholesome sweet butter, or any combination of any such products, with or without sweetening, clean wholesome egg or egg products, and with or without the use of harmless flavoring and coloring. Ice cream must contain not less than ten per centum of milk fat, and not less than thirty-three per centum total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed one per centum gelatine. No frozen milk or milk product shall be manufactured or sold unless it contains at least ten per centum butterfat, excepting sherbets and ices and other exceptions shown in this same section. All ice cream must be manufactured from pasteurized ice cream mix.

Fruit ice cream shall conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean and mature fruit, and it must contain not less than nine per centum of milk fat.

French ice cream, French custard ice cream, cooked ice cream, ice custard, parfaits and all similar frozen products, excepting sherbets and water ices, are varieties of ice cream.

Ice cream mix is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with all the requirements for ice cream as set forth herein.

Milk sherbet means the pure, clean, frozen product made from milk product, water and

sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than 0.35 of one per centum of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than four per centum by weight of solids.

Ice or ice sherbet means the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, and with or without harmless coloring, and must not contain less than 0.35 of one per centum of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain no milk solids.

Creamery. A creamery is a place where the milk or cream furnished by three or more persons is used for the manufacture into butter for commercial purposes.

Cheese factory. A cheese factory is a place where milk furnished by three or more persons is made into cheese for commercial purposes.

Ice cream factory. An ice cream factory is a place where ice cream mix is frozen into ice cream for commercial purposes.

Ice cream mix factory. An ice cream mix factory is any place where ice cream mix is made.

Milk or cream buying or collecting station. A milk or cream buying or collecting station is any place where milk or cream is bought or collected for shipment or delivery to a creamery or to any person intending to make use of the same for commercial purposes.

Person. The term "person" as used herein shall include all persons, whether natural or artificial, including firms, co-partnerships, corporations and marketing associations of every description.

Department. The term "department" as hereinafter used shall, unless otherwise indicated, refer to the department of agriculture, labor and industry of the state of Montana.

It shall be unlawful for any person, firm or corporation by himself, his or its servant or agent, to manufacture, sell, expose or offer for sale or exchange any butter or other substance or commodity defined in this act containing a less quantity of butterfat or other ingredient than herein required. Any such violator shall be deemed guilty of a misdemeanor and shall be punished according to the provisions of section 2620.60 of this act.

[L. '37, Ch. 68, § 1, amending R. C. M. 1935, § 2620.4. Approved and in effect February 27, 1937.

Section 8 repeals conflicting laws.

Section 10 is partial invalidity saving clause.

2620.20. Location and construction of creameries, cheese factories, ice cream factories and ice cream mix factories — sanitary conditions — meat — storage — steam boiler — hot water — steam — concrete floors — walls — ceilings — equipment — can washer — ice cream freezers in stores — ventilation and lighting — screens. The location and construction of creameries, cheese factories and ice cream mix factories shall be subject to the following regulations:

(a) They shall not be located within 200 feet of any hog pen or corral.

(b) The buildings and equipment of all creameries, cheese factories, ice cream factories and ice cream mix factories must be of such character that the dairy products manufactured or kept therein shall be preserved in first class, sanitary condition.

(c) Meat or other products must not be stored in the same room or cabinet with dairy products if it can be shown that any of the dairy products kept in such room or cabinet are contaminated by the inclusion of any other product in same room or cabinet.

(d) Creameries, cheese factories and ice cream mix factories shall be equipped with a steam boiler large enough to furnish sufficient steam and boiling water to thoroughly wash and sterilize all equipment and utensils and to thoroughly pasteurize all milk and milk products.

(e) All ice cream factories shall have available sufficient steam or hot water to thoroughly wash and sterilize all equipment and utensils.

(f) The floors of the part of the factories where butter, cheese or ice cream mix are manufactured and stored must be of concrete and so constructed that they can be thoroughly washed and drained.

(g) The floors of the part of the factories where ice cream is manufactured or stored must be water-proof and of a material that can be thoroughly washed and cleaned; the walls and ceilings of such room shall be of a suitable impervious material which shall be smooth and tight, clean and cleanable; the ceiling of such room shall not be less than eight feet from floor. The ice cream freezing equipment shall be installed in such a way that it shall not be subject to undue contamination by dirt, dust, flies or handling by customers; such room shall not be used as a place of habitation or as sleeping quarters.

(h) All butter, cheese, ice cream mix and ice cream factories must be equipped with a can washer or double compartment sink and must be connected with the sewer or pipe which will convey the waste water under ground to a point not less than fifty feet from the building.

(i) Whenever ice cream freezing equipment is installed in a room which is a drug, confectionery or other food or drink establishment, to which the public has access, such equipment shall be installed in a sanitary manner to be approved by the commissioner of agriculture or his agents and thereafter shall be kept and maintained in a sanitary condition.

(j) All butter, cheese, ice cream and ice cream mix factories must be well ventilated and must be provided with windows containing at least ten square feet of glass for each one hundred feet of floor space, or other approved lighting system. Between May 1st and November 1st of each year screen doors shall be provided and used on all outside doorways. During said time screens shall be provided and used on all open windows. [L. '37, Ch. 68, § 2, amending R. C. M. 1935, § 2620.20. Approved and in effect February 27, 1937.]

Section 8 repeals conflicting laws.

Section 10 is partial invalidity saving clause.

2620.34. Butter — how wrapped — name of maker — weight — on package. All creamery butter sold, offered or exposed for sale at retail in the state of Montana, wherever manufactured, must be wrapped in parchment paper and must have the wholesalers or manufacturers name clearly printed in a conspicuous place on the outside of the package in which it is sold. On each pound package of butter so sold or offered for sale the words "16 ounces net weight" or "1 lb. net weight" shall appear. [L. '37, Ch. 68, § 3, amending R. C. M. 1935, § 2620.34. Approved and in effect February 27, 1937.]

Section 8 repeals conflicting laws.

Section 10 is partial invalidity saving clause.

2620.49. Pasteurization defined — process. The process of pasteurization, as applied to milk, skim milk, cream and other milk products is hereby defined to be a process for the elimination therefrom of organisms harmful to human beings, which process consist [consists] of;

(a) Uniformly heating every particle of such milk, skim milk or cream, as the case may be, to the temperature of not less than 142 degrees Fahrenheit and of holding same at a temperature of 142 degrees Fahrenheit for a period of not less than thirty minutes or

more than one hour, and immediately thereafter cooling same to a temperature of not above 50 degrees Fahrenheit providing that the cream is pasteurized to be used in the manufacture of cheese or culture milk, in such case the cooling temperature may be above that herein specified;

(b) Milk or the derivatives that are to be used in the manufacture of milk products and cream may be pasteurized by heating above 142 degrees Fahrenheit when every particle of which is uniformly heated and held at a temperature above 145 degrees Fahrenheit, the time for holding may be decreased from thirty minutes by one minute for each degree of temperature above 145 degrees Fahrenheit. If milk is repasteurized it must not be sold for market milk. [L. '37, Ch. 68, § 4, amending R. C. M. 1935, § 2620.49. Approved and in effect February 27, 1937.]

Section 8 repeals conflicting laws.

Section 10 is partial invalidity saving clause.

2620.70. Regulations for sale of butter — content of milk fat. Any product manufactured, sold, offered or exposed for sale as butter shall contain not less than 80% milk fat, no tolerance for deficiency being allowed. [L. '37, Ch. 68, § 5, amending R. C. M. 1935, § 2620.70. Approved and in effect February 27, 1937.]

Section 8 repeals conflicting laws.

Section 10 is partial invalidity saving clause.

2620.71. Wholesale butter and cheese dealers' license — license for place of business — sanitation. It shall hereafter be unlawful for any person, firm or corporation, by himself, his or its servant or agent, to sell, exchange or offer for sale at wholesale or have in his or its possession with intent to sell or offer for sale or exchange at wholesale any butter or cheese without first securing a license from the department of agriculture, labor and industry of the state of Montana to conduct such sale or exchange. The fee for such license shall be \$20.00. Those creameries already having a license from said department permitting them to manufacture butter or cheese shall be exempted from this license. Whenever any person, firm or corporation by himself, his or its servant or agent, or as the agent or servant of another, conduct such sale or exchange in more than one place of business, a separate license shall be obtained for each place of business and a separate fee shall be charged for such license. All wholesalers or jobbers handling butter or cheese shall conduct their business under the same regulations of cleanliness, sanitation and refrigeration as prescribed for dairy manufacturing plants. [L. '37, Ch. 68, § 6, amend-

ing R. C. M. 1935, § 2620.71. Approved and in effect February 27, 1937.

Section 8 repeals conflicting laws.

Section 10 is partial invalidity saving clause.

2620.72. Condemnation of unfit containers of milk and cream. The commissioner of agriculture or his agents are authorized to condemn any container of milk or cream that is rusty or unfit for use for such purpose. Any container found unfit for use as a container for milk or cream shall be condemned and marked for identification by the commissioner of agriculture or his agents. Should the container be used for milk and cream after being so condemned, it shall be destroyed. [L. '37, Ch. 68, § 7, amending R. C. M. 1935, § 2620.72. Approved and in effect February 27, 1937.

Section 8 repeals conflicting laws.

Section 10 is partial invalidity saving clause.

2634.1. Egg dealers' license—fee. Every person engaged in the business of buying, selling or dealing in eggs, except those persons or firms who do not buy and sell more than an average of 25 cases of eggs per month for any one year, other than those produced by fowls owned by such persons, shall obtain a license from the commissioner of agriculture for each establishment at which said business is conducted, and shall render to the commissioner of agriculture such reports as may be requested by said commissioner. The fee for such license shall be two dollars (\$2.00) per year for dealers buying eggs for sale at retail. The fee for such license shall be twenty dollars (\$20.00) per year for dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses shall expire March 31st each year after the date of issuance. [L. '39, Ch. 151, § 1, amending R. C. M. 1935, § 2634.1. Approved and in effect March 11, 1939.

Section 12 is partial invalidity saving clause.

Section 13 repeals conflicting laws.

2634.5. Certificate of candling. Every person buying eggs for resale at retail, except persons or firms who do not buy and sell more than 25 cases of eggs per month, shall candle all eggs offered to him, which have not been candled by a licensed egg grader; and he shall refuse to buy eggs unfit for human food as defined in section 2634.6. "Rejects" shall be returned to the producer, if possible, or, if requested, the candling shall be done in the presence of the producer. A certificate shall be placed on the top layer of every case of eggs if candled and graded, which should state exact grade and size, also date of candling, by whom candled and license number of licensee. If not candled, or graded, the

certificate should state "not candled or graded", the name of the dealer and when packed. Such certificate shall be printed on card or sheets of paper not smaller in size than $2\frac{3}{8}$ by $4\frac{1}{4}$ inches. [L. '39, Ch. 151, § 2, amending R. C. M. 1935, § 2634.5. Approved and in effect March 11, 1939.

Section 12 is partial invalidity saving clause.

Section 13 repeals conflicting laws.

2634.6. Eggs defined as unfit for human food. Eggs hereinafter defined shall be deemed unfit for human food:

(a) "Addled", or "white rot" means an egg that is putrid or rotten.

(b) "Moldy" means an egg which, through improper care, has deteriorated so that mold spores have formed within the egg.

(c) "Blood spot" is a spot of blood adhering to the yolk of an egg.

(d) "Black rot" means an egg which has deteriorated to such an extent that the whole interior presents a blackened appearance.

(e) "Blood ring" means an egg in which the germ has developed to such an extent that blood is formed.

(f) "Adherent yolk" means an egg in which the yolk has become fastened to the shell.

(g) "Incubated eggs" shall include eggs which have been subjected to incubation, whether natural or artificial, for more than forty-eight (48) hours, and it shall be unlawful to offer for sale incubated eggs unless branded or stamped with the word "incubated".

(h) "Bloody white" means an egg with a general reddish appearance due to blood mixed through it and which egg may show spots of blood floating in the white.

(i) "Meat spot" means that the egg has a speck of foreign matter adhering to the yolk or floating in the white. [L. '39, Ch. 151, § 3, amending R. C. M. 1935, § 2634.6. Approved and in effect March 11, 1939.

Section 12 is partial invalidity saving clause.

Section 13 repeals conflicting laws.

2634.7. Imported eggs—labeling "imported eggs"—signs. All eggs imported into the state of Montana from other states or foreign countries shall be sold as such. All such eggs sold in Montana must comply with the requirements of this act and must be inspected and passed by licensed Montana egg graders. The case or container in which they are shipped shall have the words "foreign eggs" or the word "eggs" preceded by the name of the country or state where produced displayed thereon in letters two inches high. All

retailers of said eggs shall sell them from the container in which he received them and shall inform each purchaser that said eggs are foreign eggs. All restaurants, hotels, cafes, bakeries and confectioners using or serving foreign eggs in any form must place a sign in letters not less than four (4) inches in size in some conspicuous place, where the customer entering their place of business can see it, to read "we use foreign eggs", or the same words with the exception that the name of the country or state where the eggs were produced may be substituted for the term "foreign". [L. '39, Ch. 151, § 4, amending R. C. M. 1935, § 2634.7. Approved and in effect March 11, 1939.]

Section 12 is partial invalidity saving clause.

Section 13 repeals conflicting laws.

2634.8. Notice to purchaser of grade of eggs. It shall be unlawful for any person to sell, offer or expose for sale at wholesale or retail any eggs for human consumption, without notifying the person or persons purchasing or intending to purchase the same, of the exact grade or quality and size or weight of such eggs, according to the standards prescribed by the commissioner of agriculture, by stamping or printing on the container of any such eggs, such grade or quality and size or weight, and in the case said eggs are offered for sale in bulk, without also displaying in a conspicuous place at the point where such eggs are offered or exposed for sale, a placard or sign printed in letters two (2) inches high, giving such grade, quality, size and weight and date of grading without placing a Montana state egg seal upon each carton, bag or other container in which eggs are sold, delivered or offered for sale at retail to the consumer. Provided, that this act shall not affect the sale of eggs by the producers when the consumer purchased said eggs at the place of production. [L. '39, Ch. 151, § 5, amending R. C. M. 1935, § 2634.8. Approved and in effect March 11, 1939.]

Section 12 is partial invalidity saving clause.

Section 13 repeals conflicting laws.

2634.9. Invoice to show grade of eggs. Every person other than the producer, except persons or firms who do not sell more than 25 cases of eggs per month, in selling eggs to a retailer shall furnish to such retailer an invoice showing the exact grade or quality of such eggs according to standards prescribed by the commissioner of agriculture. [L. '39, Ch. 151, § 6, amending R. C. M. 1935, § 2634.9. Approved and in effect March 11, 1939.]

Section 12 is partial invalidity saving clause.

Section 13 repeals conflicting laws.

2634.11. Violations of act—penalties. Every person failing to comply with the requirements of this act or any provisions of this act shall be guilty of a misdemeanor and upon conviction for the first offense shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than seventy-five dollars (\$75.00). Upon conviction for the second or any subsequent violation of the foregoing provisions of the act the violator shall be fined not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00). [L. '39, Ch. 151, § 7, amending R. C. M. 1935, § 2634.11. Approved and in effect March 11, 1939.]

Section 12 is partial invalidity saving clause.

Section 13 repeals conflicting laws.

2634.12. Montana state egg seal. The commissioner of agriculture is hereby authorized and it shall be his duty to provide and make available a suitable gummed paper seal to be known as the Montana state egg seal; and he shall have the power from time to time to establish the price at which said seal shall be sold, but in no case shall the cost of such seal exceed one, and three-quarters mills ($1\frac{3}{4}$) per dozen eggs. The proceeds from the sale of said seals shall be expended by the commissioner of agriculture to assist in defraying salaries and expenses incurred in the enforcement of the provisions of this act. [L. '39, Ch. 151, § 8, adding to R. C. M. 1935, Ch. 240, a new section 2634.12. Approved and in effect March 11, 1939.]

Section 12 is partial invalidity saving clause.

Section 13 repeals conflicting laws.

2634.13. Licensed egg graders. All wholesale and retail dealers who handle more than twenty-five (25) cases of eggs per month supplying eggs to consumers must employ only experienced and licensed graders. The fee for grader's license shall be one dollar (\$1.00) per year. All candlers and graders must pass an examination as required by the commissioner of agriculture. The license shall expire March 31st each year after the date of issuance. [L. '39, Ch. 151, § 9, adding to R. C. M. 1935, Ch. 240, a new section 2634.13. Approved and in effect March 11, 1939.]

Section 12 is partial invalidity saving clause.

Section 13 repeals conflicting laws.

2634.14. Revocation of license. All licenses issued by the department under this act may be revoked by the commissioner of agriculture or his agents in the state of Montana, whenever the holder of such license shall fail to comply with the laws of the state of Montana relative to the conducting of his place of business under such license. If any firm, person or corporation whose license has been

so revoked by the commissioner shall thereafter continue to buy, sell or deal in eggs without a license, he shall be deemed guilty of a misdemeanor and shall be subject to the penalties of this act herein provided. [L. '39, Ch. 151, § 10, adding to R. C. M. 1935, Ch. 240, a new section 2634.14. Approved and in effect March 11, 1939.]

Section 12 is partial invalidity saving clause.

Section 13 repeals conflicting laws.

2634.15. Funds derived from license fees and sale of egg seals — disposition. All funds derived from the licenses herein provided and from the sale of the Montana state egg seal shall be paid to the state treasurer and by him credited to the revolving fund of the dairy division of the department of agriculture, labor and industry. [L. '39, Ch. 151, § 11. Approved and in effect March 11, 1939.]

Section 12 is partial invalidity saving clause.

Section 13 repeals conflicting laws.

CHAPTER 241

MILK CONTROL BOARD

Section

2639.1-2640. Repealed.

2640.1. Milk—declaration of policy—unfair trade practices—milk industry—supervision—police power of state—surplus supply—effect thereof on quality—price stabilization—law of supply and demand—inadequacy for protection of industry.

2640.2. General purpose of act.

2640.3. Definitions.

2640.4. Milk control board—creation—personnel—terms of office—vacancies—quorum—compensation—employees—secretary—appointment—powers and duties—bond.

2640.5. General powers of board—enumeration—not limited by specific powers conferred by act.

2640.6. Markets—those heretofore designated—new markets—act applicable to—disestablishment of markets.

2640.7. Orders fixing prices and handling charges—minimum prices to be paid by dealers—minimum wholesale and retail prices—revision of price orders by board—milk in quart bottles—retail price.

2640.8. Licenses to producers, producer-distributors, and distributors.

2640.9. License fees—enumeration and amounts.

2640.10. Application for licenses—license year.

2640.11. Declining, suspending, and revoking licenses.

2640.12. Delinquency in payment of license—penalty.

2640.13. Rules and orders—adoption and enforcement by board—posting—effect.

2640.14. Rules of fair trade practices.

2640.15. Entry, inspection, and investigation.

2640.16. Reports of dealers.

2640.17. Disposition of license fees and fines.

2640.18. Formation of local associations.

2640.19. Cooperative corporations.

Section

2640.20. Hearings—fees for officers serving subpoenas—witness fees and mileage.

2640.21. Cooperation with other governmental agencies.

2640.22. Violations made misdemeanors—penalties—district court jurisdiction—county attorneys—duty.

2640.23. Constructions, exceptions, and limitations—foreign or interstate commerce.

2640.24. Additional remedies.

2640.25. Transfer of assets.

2640.26. Repeals.

2639.1-2640. Repealed. [L. '39, Ch. 204, § 26. See § 2640.26.]

2640.1. Milk — declaration of policy — unfair trade practices — milk industry — supervision — police power of state — surplus supply — effect thereof on quality — price stabilization — law of supply and demand — inadequacy for protection of industry. It is hereby declared:

(a) That milk is a necessary article of food for human consumption;

(b) That the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;

(c) That the production, transportation, processing, storage, distribution and sale of milk, in the state of Montana, is an industry affecting the public health and interest;

(d) That unfair, unjust, destructive and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk, which trade practices constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of content and purity of milk;

(e) That health regulations alone are insufficient to prevent disturbances in the milk industry and to safe-guard the consuming public from further inadequacy of a supply of this necessary commodity;

(f) That it is the policy of this state to promote, foster and encourage the intelligent production and orderly marketing of fluid milk and cream; to eliminate speculation and waste, and to make the distribution thereof between the producer and consumer as direct as can be efficiently and economically done, and to stabilize the marketing of such commodities;

(g) That investigations have revealed and experience has shown that, due to the nature of milk and the conditions surrounding the production and marketing of milk, and due

to the vital importance of milk to the health and well being of the citizens of this state, it is necessary to invoke the police powers of the state to provide a constant supervision and regulation of the milk industry of the state to prevent the occurrence and recurrence of those unfair, unjust, destructive, demoralizing and chaotic conditions and trade practices within the industry, which have in the past affected the industry and which constantly threaten to be revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to the consuming public and to the citizens of this state;

(h) That fluid milk is a perishable commodity, which is easily contaminated with harmful bacteria, which cannot be stored for any great length of time, which must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day, but, due to natural and seasonal conditions, must be produced on a constantly uniform and even basis;

(i) That the demand for this perishable commodity fluctuates from day to day and from time to time making it necessary that the producers and distributors shall produce and carry on hand a surplus of milk in order to guarantee and insure to the consuming public an adequate supply at all times, which surplus must of necessity be converted into by-products of milk at great expense and oftentimes at a loss to the producer and distributor;

(j) That this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and destroy the fluid milk industry, which causes producers to relax their diligence in complying with the provisions of the health authorities and oftentimes to produce milk of an inferior and unsanitary quality;

(k) That investigation and experience have further shown that, due to the nature of milk and the conditions surrounding its production and marketing, unless the producers, distributors, and others engaged in the marketing of milk are guaranteed and insured a reasonable profit on milk, both the supply and quality of milk is affected to the detriment of, and against the best interest of the citizens of this state whose health and well-being is thereby vitally affected;

(L) That, where no supervision and regulation is provided for the orderly and profitable marketing of milk, past experience has shown that the credit status of both producers and distributors of milk is adversely affected to a serious degree thereby entailing loss and hardship upon all within the community with

whom these producers and distributors carry on business relations;

(m) That, due to the nature of milk and the conditions surrounding its production and distribution the natural law of supply and demand has been found inadequate to protect the industry in this and other states, and in the public interest it is necessary to provide state supervision and regulation of the fluid milk industry in this state. [L. '39, Ch. 204, § 1. Approved and in effect March 17, 1939.

2640.2. General purpose of act. The general purpose of this law is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the fluid milk industry. It is enacted in the exercise of the police powers of the state. [L. '39, Ch. 204, § 2. Approved and in effect March 17, 1939.

2640.3. Definitions. As used in this act, unless the context otherwise requires, "board" means the state agency created by this act, to be known as the Montana milk control board.

"Person" means any person, firm, corporation or association.

"Producer" means any person who produces milk for fluid consumption within the state, selling same at wholesale to a distributor.

"Distributor" means any person purchasing milk and distributing same for fluid consumption within the state. Said term, however, excludes all persons purchasing milk from a dealer licensed under this act, for resale over the counter at retail, or for consumption on the premises.

"Producer-distributor" means any person both producing and distributing milk for fluid consumption within the state.

"Dealer" means any producer, distributor or producer-distributor.

"Licensee" means any person who holds a license from the board.

"Association" means any organized group of dealers in a community or marketing area which has been constituted under regulations satisfactory to the board.

"Market" means any city, town, or community of the state, or two or more of the same, designated by the board as a natural marketing area.

"Milk" means fluid milk and cream sold for consumption as such.

"Consumer" means any person or any agency, other than a dealer, who purchases milk for consumption or use. [L. '39, Ch. 204, § 3. Approved and in effect March 17, 1939.

2640.4. Milk control board — creation — personnel — terms of office — vacancies — quorum — compensation — employees — secretary — appointment — powers and duties — bond. There is hereby constituted a milk control board to consist of the executive officer of the Montana livestock sanitary board, as chairman, who shall serve in ex-officio capacity without compensation except for necessary expenses while engaged with the duties of the board, and four members who shall be appointed by the governor with the following qualifications: One person who is a "consumer" and who is not otherwise engaged in the milk business, one person who is a "producer" selling to a distributor, one person who is a "producer-distributor", and one person who is a "distributor". The three persons appointed from the industry shall be selected from a market or markets designated and established by the board.

All terms of appointment shall be for a term of four years except the original appointments which shall be for terms of one, two, three and four years respectively as designated by the governor. Any vacancy shall be filled by appointment by the governor for the unexpired term. Three members of the board shall constitute a quorum for the regular transaction of business.

The compensation of the appointed members of the board shall be fixed at five dollars (\$5.00) per day for each day actually engaged in the official functions of the board plus subsistence and necessary traveling expenses at the rate allowed other state employees.

The board may employ necessary assistants and appoint agents and instrumentalities but all expenditure under this act shall be paid from the receipts hereunder.

The board shall have the power, and it shall be its duty to designate an executive secretary who shall serve under the direction and at the pleasure of the board and who shall have charge of the administration of the board's orders, rules and regulations, and who shall also serve as financial officer of the board and who shall be authorized to accept or receive money paid or to be paid to the board, either as license fees or fines as provided by this act. Such person shall, before he enters upon the discharge of his duties, execute and file a bond, in such amount as may be fixed by the board, as may be provided by law for public officers. [L. '39, Ch. 204, § 4. Approved and in effect March 17, 1939.]

2640.5. General powers of board—enumeration — not limited by specific powers conferred by act. The board is hereby vested with the powers, and it shall be its duty to supervise,

regulate and control the fluid milk industry of the state of Montana, including the production, transportation, processing, storage, distribution and sale of milk in the state of Montana for consumption within the state, providing however, that nothing contained in this act shall be construed to abrogate or affect the status, force or operation of any provision of public health laws or the law under which the Montana livestock sanitary board is constituted together with the Montana livestock sanitary board regulations or county board of health regulations, or municipal ordinances for the promotion or protection of the public health, but the board shall have the power to cooperate with the state board of health, the Montana livestock sanitary board or any county or city board of health or the state department of agriculture, labor and industries in enforcing the provisions of this act. The board shall have the power to investigate all matters pertaining to the production, transportation, processing, storage, distribution and sale of milk in the state of Montana and to conduct hearings upon any subject pertinent to the administration of this act. The board shall have the power to subpoena milk dealers, their records, books and accounts and any other person from whom information may be desired or deemed necessary to carry out the purposes and intent of this act, and may issue commissions to take depositions of witnesses who are sick or absent from the state. It shall be the duty of any sheriff of any county of the state, when requested to do so by the board, to execute any summons, citations or notice which the board may cause to be issued, for which such sheriff shall be authorized to charge the same fee against the funds provided for the milk control board as he might lawfully charge for the same service of such a document if issued from any district court of the state of Montana. Any person, other than a dealer who is cited for violation of the provisions of this act, or cited to show cause why his license should not be revoked, shall receive for his attendance before the milk control board or its duly designated agent the same compensation as is provided for a witness subpoenaed to appear before the district court, which shall be charged against the funds provided for the operation of the milk control board. Any duly designated agent of the board may administer oath to witnesses and may conduct hearings or investigations and any such duly designated agent of the board may sign and issue subpoenas requiring witnesses to appear before him or the board, and in addition to the manner provided above for the execution of subpoenas, summons and citations issued by the

milk control board to witnesses or dealers, the board, through its designated agent shall have the power to serve said subpoenas, summons or citations upon any person by sending a copy of such subpoena, summons or citation, through the United States mail, postage prepaid, which said mail shall be registered with return receipt attached and such service shall be complete when said registered mail shall be delivered to said person and such receipt returned to the board or its designated agent, signed by the person sought to be summoned, subpoenaed, or cited. Obedience to a subpoena, summons or citation, issued by the board or any person authorized and designated by the board to issue said subpoena, summons or citation, may be enforced by application to any judge of the district court of the county in which such subpoena, summons or citation was issued or to any judge of the district court of the county in which such person subpoenaed, summoned or cited resides in the same manner as is provided by law for the grand jury of a county to enforce its subpoena or summons and with the same penalty as provided therefor for the failure of any person failing or refusing to comply with such subpoena, citation or summons. The board may act as mediator or arbitrator to settle any controversy or issue pertaining to fluid milk among or between producers, distributors, producers-distributors and/or consumers.

The operation and effect of any provision of this act, conferring a general power upon the milk control board, shall not impair or limit any specific power or powers granted to the milk control board by this act. [L. '39, Ch. 204, § 5. Approved and in effect March 17, 1939.]

2640.6. Markets—those heretofore designated—new markets—act applicable to—disestablishment of markets. The board shall exercise its powers only within and in relation to markets already designated and established or such markets as shall be established in accordance with the provisions of this act.

(a) All natural marketing areas heretofore designated as markets by the milk control board, operating under authority of any hitherto existing milk control law, shall remain as markets as designated and are hereby declared to be legally constituted markets for all purposes of this act. This act shall, immediately upon its passage, become effective in all markets which have heretofore been designated as such by any previously constituted milk control board and are functioning as such at the time of passage of this act, and all schedules, rules and regulations issued and promulgated by any previously existing

milk control board in this state that at the time of passage of this act are of force and effect are hereby declared to be of force and effect and shall continue to be of force and effect until altered or rescinded in the manner provided by this act.

(b) The board shall have power, at its discretion, to establish a new market in any natural marketing area of the state that it may designate, provided that before a designated market shall be established, a canvass shall be made by the board, of all producers, producer-distributors and distributors doing business within the designated market and who are licensed by the Montana livestock sanitary board and who have been, for not less than ninety days, actually engaged in any one of the above indicated branches of the fluid milk industry and in the event that such preliminary canvass shall make it evident to the board that a majority of all the above-designated dealers representing a majority of the fluid milk sold by all said dealers licensed by the Montana livestock sanitary board are in favor of the establishment of such proposed market, the board shall proceed toward the establishment of such market but shall be restrained therefrom until such time as it shall be made evident to the board that a majority of the above-designated dealers are favorable to the establishment of such a market.

This act shall become operative with respect to a newly established market when the requirements of this act for the establishment of a new market have been complied with and when the board shall duly promulgate orders and regulations governing the same, and setting forth the date at which said orders and regulations shall go into effect.

The board shall have power, at its discretion, to disestablish a market and withdraw from functioning therein, provided that before such withdrawal and disestablishment shall take place, a canvass shall be made by the board of all producers, distributors and producer-distributors licensed under this act, and in the event that such canvass shall make it evident to the board that a majority of all the above-designated dealers representing a majority of the fluid milk sold by all the above-designated dealers are opposed to such withdrawal and disestablishment, then the board shall proceed no further toward the proposed withdrawal and disestablishment of such market. But in the event that the board is not restrained, as above provided, the proposed disestablishment of said market shall take place immediately upon due promulgation of orders to that effect by the board. [L. '39, Ch. 204, § 6. Approved and in effect March 17, 1939.]

2640.7. Orders fixing prices and handling charges — minimum prices to be paid by dealers — minimum wholesale and retail prices — revision of price orders by board — milk in quart bottles — retail price. Prior to the fixing of prices in any market the board shall conduct a public hearing and admit evidence under oath relative to the matters of its inquiry, at which hearing the consuming public shall be entitled to offer evidence and be heard the same as persons engaged in the milk industry. The board shall by means of such hearing and by any other means available or from facts within its own knowledge, investigate and determine what are reasonable costs and charges for producing, hauling, handling, processing, and/or other services performed in respect to milk and what prices for milk in the several localities and markets of the state, and under varying conditions, will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, and be most in the public interest.

The board shall take into consideration the balance between production and consumption of milk, the costs of production and distribution, and the purchasing power of the public.

The board after making such investigation shall fix by official order:

(a) The minimum prices to be paid by the milk dealers to producers and others for milk. The orders of the board with respect to the minimum prices to be paid to producers and others shall apply to the locality or zone in which the milk is produced in respect to the market or markets in which milk so produced is sold, and may vary in different localities or zones or markets according to varying uses and different conditions. Each order fixing prices or handling charges may classify milk by forms, classes, grades or uses as the board may deem advisable and may specify the minimum prices therefor.

(b) The minimum wholesale or retail prices to be charged for milk in its various grades and uses handled within the state for fluid consumption and wheresoever produced when sold by milk dealers whether licensed or unlicensed, to consumer; by stores to consumers except for consumption on the premises where sold; by milk dealers to other milk dealers.

A minimum wholesale or retail price to be charged for milk shall not be fixed higher than is necessary to cover the costs of ordinarily efficient and economical milk dealers, including a reasonable return upon necessary investment.

The board may, upon its own motion, or upon application in writing from any market, or from any party at interest, alter, revise

or amend any official order theretofore made by the board provided that before making, revising, or amending any order fixing prices to be charged or paid for milk in any of its grades or uses, the board shall hold a public hearing on such matter in the same manner provided herein for the original fixing of prices.

The retail price to be charged for milk in quart bottles shall not be more than twice the price paid by the distributor to the producer for the same grade and butterfat content of fluid milk purchased from the producer by such distributor. The board shall make adjustment from the basic rate in prices of milk sold in less quantities than quarts and at wholesale. [L. '39, Ch. 204, § 7. Approved and in effect March 17, 1939.]

2540.8. Licenses to producers, producer-distributors, and distributors. In any market, where the provisions of this act apply, it shall be unlawful for any producer, producer-distributor, or distributor to produce, transport, process, store, handle, distribute, buy or sell milk unless such dealer be duly licensed as provided by this act. It shall be unlawful for any such person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this act. The board may decline to grant a license, or may [may] suspend or revoke a license already granted, upon due cause and after hearing. [L. '39, Ch. 204, § 8. Approved and in effect March 17, 1939.]

2640.9. License fees — enumeration and amounts. All persons required by this act to be licensed by the board shall pay a yearly license fee computed upon the following rates:

(a) A producer-distributor doing business during the twelve (12) months beginning October first and ending September thirtieth next preceding the license year, shall pay a license fee equal to the sum of one dollar (\$1.00) for each six hundred (600) gallons or fraction thereof of the total volume of fluid milk by him sold.

(b) A producer, doing business during the twelve (12) months beginning October first and ending September thirtieth next preceding the license year, shall pay a license fee equal to the sum of fifty cents (\$0.50) for each six hundred (600) gallons or fraction thereof of the total volume of fluid milk by him sold.

(c) A distributor, doing business during the twelve (12) months beginning October first and ending September thirtieth next preceding the license year, shall pay a license fee equal to the sum of fifty cents (\$0.50)

for each six hundred (600) gallons or fraction thereof of the total volume of fluid milk by him sold, excepting that which is sold to another distributor.

(d) A producer-distributor or distributor, who deals in the handling of sweet cream but sells no fluid milk shall pay a license fee of one dollar (\$1.00).

(e) Any person required by this act to be licensed who, by reason of the fact that he has not previously engaged in the business, or who, for any other reason lacks the record of a full preceding year's business upon which to compute the amount of the fee of the license to be applied for, shall submit to the board such pertinent facts, records and information as the applicant may possess and the board may require concerning the volume of the applicant's business whether past or prospective as the case may be, and it shall be the duty of the board, upon the basis of the information thus or otherwise acquired to determine what, in conformity with the rates heretofore established, is a just and equitable charge for the license so applied for, and the sum so determined by the board shall be the legal license fee said applicant shall pay for the license year, or for the remaining quarter or quarters of the license year then current.

(f) The board may, if it deems advisable, permit licensees to pay license fees in installments.

(g) However, it is specifically provided with respect to the license fees for the license year beginning January first, nineteen hundred and thirty-nine, as follows:

Where any licensee has paid in to the board under the provisions of the heretofore existing milk control law any license fee or fees or assessments the board shall credit to the said licensee and apply the sum or sums so paid upon the amounts due from said licensee in payment for license or licenses required under this act; and the board is hereby authorized to adjust and equalize upon an equitable basis, all adjustment of license assessment accounts requiring adjustment by reason of the repeal of the heretofore existing milk control law and the substitution therefor of the provisions of this act. [L. '39, Ch. 204, § 9. Approved and in effect March 17, 1939.]

2640.10. Application for licenses — license year. An applicant for license to operate as a producer, producer-distributor or distributor shall file a signed application upon a blank prepared under authority of the board, and an applicant shall state such facts concerning his circumstances and the nature of the business to be conducted as in the opinion of the board are necessary for the administration of

this act. Such application shall certify the applicant to be the holder of all licenses required by the Montana livestock sanitary board for the conduct of his business and such application shall be accompanied by the license fee required to be paid. The board may classify licenses and may issue licenses to dealers to carry on a certain designated kind of business only and shall require each dealer to obtain a license for each subdivision of the industry in which he may engage whether as producer, distributor, or producer-distributor and a separate license for each separate market in which he may do business, provided that this shall not apply to transactions among and between distributors. Application shall be duly made, within ten days after this act takes effect in any market, by all dealers engaged in business in such market.

In all markets the license year shall begin with January first of each year, but where the case applies, as in the establishment of a new market or the licensing of an applicant newly engaging in business, the license fee shall be reduced twenty-five per cent (25%) for each fully elapsed quarter of the license year prior to the insurance of said license, provided, however, that no license fee, for any period, shall be less than twenty-five per cent (25%) of the yearly total. [L. '39, Ch. 204, § 10. Approved and in effect March 17, 1939.]

2640.11. Declining, suspending, and revoking licenses. The board may decline to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this act or of any lawful order or regulation of the board, the failure or refusal to make required statements or reports, and aggravated delinquency in the payment of license fees or any of them shall be deemed causes for which the board may, at its discretion, suspend or revoke a license, provided that no license shall be fully revoked except upon the approval of a majority of all members of the board. [L. '39, Ch. 204, § 11. Approved and in effect March 17, 1939.]

2640.12. Delinquency in payment of license — penalty. Any person who fails to pay his license fee when due or within the time, if any, extended by the milk control board for the payment of such license fee, shall automatically owe a penalty of ten per cent (10%) of the delinquent portion of said yearly license fee. And in the event of a license being revoked for failure to pay a license fee as required in this act, the license shall not be reinstated except upon payment, in full, of the delinquent yearly fee or the delinquent portion thereof, as the case may be, plus a ten

per cent (10%) penalty upon the delinquent amount. [L. '39, Ch. 204, § 12. Approved and in effect March 17, 1939.

2640.13. Rules and orders — adoption and enforcement by board — posting — effect. The board may adopt and enforce all rules and all orders necessary to carry out the provisions of this act. Every rule or order shall be posted for public inspection in the main office of the board for thirty (30) days, and a copy filed in the office of the board, also a copy sent by registered letter to the secretary of each area, excepting an order, directed only to a person or persons named therein, which shall be served by personal delivery of a copy, or by mailing a copy, in the United States mails, with postage prepaid and properly addressed to each person to whom such order is directed, or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with the provisions of the statutes of Montana. Such posting, in the main office of the board, of any rule and of any order, not required to be served as above provided, and such filing in the office of the board shall constitute due and sufficient notice to all persons affected by such a rule or order. A rule or order when duly posted and filed or served, as provided in this act, shall have the force and effect of law. [L. '39, Ch. 204, § 13. Approved and in effect March 17, 1939.

2640.14. Rules of fair trade practices. In addition to the general and special powers heretofore set forth, the board shall have the power to make and formulate, in any established market, reasonable rules and regulations governing fair trade practices as they pertain to the transaction of business among licensees under this act within that market. [L. '39, Ch. 204, § 14. Approved and in effect March 17, 1939.

2640.15. Entry, inspection, and investigation. The board, or any person designated for that purpose by the board, shall have access to, and may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled or stored, or where the books, papers, records, or documents relative to such transactions are kept and shall have the power to inspect and copy the same in any place within the state, and may administer oath, and take testimony for the purpose of ascertaining facts, which, in the judgment of the board, are necessary to administer this act, but any such information so derived shall be treated as confidential by the board and shall be used by it only for the administration of this act and not for general public issue. Any member or employee of the board and any person

assisting the board in the administration of this act, who shall acquire any information, while in the employ of the board, in respect to the transactions, property, files, records, or papers of the board, or who shall acquire any information, while in the employ of the board, in respect to the business or mechanical, chemical or other industrial processes belonging to or employed by any person and who shall divulge the same to any person other than members of the board or the superior of any such employee of the board, except when called upon to testify in any action or proceeding in any court, wherein the board is a party, shall be guilty of a misdemeanor. [L. '39, Ch. 204, § 15. Approved and in effect March 17, 1939.

2640.16. Reports of dealers. The board shall have the power to require all persons holding licenses under it to file with the board such reports at such reasonable or regular time as the board may require, showing such person's production, sale, or distribution of milk, and any information deemed by the board necessary which pertains to the production, sale or distribution of such milk, either under oath or otherwise, as the board may direct, and failure or refusal to file such reports when directed to do so by the board or its duly designated agent shall constitute grounds for the revocation of such person's license and shall constitute a violation for which such person may be fined as hereinafter provided, one or both, at the discretion of the board. [L. '39, Ch. 204, § 16. Approved and in effect March 17, 1939.

2640.17. Disposition of license fees and fines. All fines assessed in any court for violation of the provisions of this act shall be paid over by the court to the milk control board or its properly designated agent.

All moneys received by the board shall be deposited with the state treasurer and shall be placed by him in an account to be known as the milk control board fund, the state treasurer being hereby directed and authorized to keep account of said fund and pay all warrants drawn by the state auditor, pursuant to this act, out of the said fund hereby established. All such receipts, including fines assessed for violations of this act, are hereby appropriated for the purposes of this act. [L. '39, Ch. 204, § 17. Approved and in effect March 17, 1939.

2640.18. Formation of local associations. The board shall have power and it shall be the duty of the board to promote and foster in each established market, an association organized under regulations satisfactory to the board and composed of all licensees of

the board and designated as the dairymen's association of such market. It shall be the function of such association to promote the mutual interests of its members and of the dairy industry, but its specific function with relation to the board shall be to provide an instrument whereby the licensees within the market may and they shall unitedly cooperate with and be of assistance to the board in determination, assembling and presentation of facts and findings relative to the costs of production, costs of distribution, and other factors upon which price schedules shall be based, and to otherwise counsel and assist the board as opportunity may afford in carrying out and enforcing the provisions of this act.

Such associations are hereby declared to be instrumentalities of the board and as such may receive as compensation for their services and as a means to their efficiency a percentage of the license fees paid to the board from the market so organized not to exceed ten per cent (10%) of the annual total of such license fees. [L. '39, Ch. 204, § 18. Approved and in effect March 17, 1939.]

2640.19. Cooperative corporations. No provision of this act shall be deemed or construed to prevent or abridge the right of a cooperative corporation or association organized under the laws of the state of Montana and engaged in marketing or making collective sales of milk produced by its members, from blending the net proceeds of all its sales in various classes and paying its producers such blended price, with such deductions therefrom and/or differentials as may be authorized under contracts between such corporation and its members, or from making collective sales of the milk of its members and/or other producers represented by or marketing through it at a blended price based upon sales thereof in the various classes and markets, or to prevent or abridge the right of any milk dealer from contracting for his milk with such cooperative association upon such basis, or to affect or impair the contracts of any such cooperative association with its members or other producers marketing their milk through such corporation, or to impair or affect any contracts which any such cooperative association has with milk dealers or others, or affect or abridge the rights and powers of any such cooperative association conferred by the laws of the state of Montana under which it is incorporated: provided, that the prices to be paid for milk marketed by or through any such corporation shall be those fixed by the order of the board. [L. '39, Ch. 204, § 19. Approved and in effect March 17, 1939.]

2640.20. Hearings—fees for officers serving subpoenas—witness fees and mileage. Each officer, other than an employee of the board, who serves any subpoena of the board, shall receive the fees legally provided for such service and each witness who appears in obedience to a subpoena, before the board or a member or its agent, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in district courts, which fees shall be audited and paid in the same manner as other expenses are audited and paid upon the presentation of proper vouchers, approved by the board.

No witnesses subpoenaed at the instance of a party other than the board, or one of its members, or its agent, shall be entitled to compensation unless the board shall certify that his or her testimony was material to the matter investigated. [L. '39, Ch. 204, § 20. Approved and in effect March 17, 1939.]

2640.21. Cooperation with other governmental agencies. In order to secure a uniform system of milk control, the board is hereby vested with power, and it shall be its duty to confer and cooperate with the legally constituted authorities of other states and of the United States, including the secretary of agriculture of the United States, and, for the foregoing purposes, the board shall have the power to conduct joint hearings, issue joint or concurrent orders and exercise all its powers under this act. [L. '39, Ch. 204, § 21. Approved and in effect March 17, 1939.]

2640.22. Violations made misdemeanors—penalties—district court jurisdiction—county attorneys—duty. (a) Any person, required by this act to be licensed, who shall produce, sell, distribute, or handle milk in any way, except as a consumer, without first having obtained a license, as required of him by this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding six hundred dollars (\$600.00). Each day's violation of this provision shall constitute a separate offense. A violation of any provision of this act or of any lawful rule of [or] order of the board, including a failure to answer subpoena or to testify before the board, shall be deemed a misdemeanor punishable by a fine not exceeding six hundred dollars (\$600.00), and each day during which such violation shall continue shall be deemed a separate violation.

(b) The district courts shall have original jurisdiction in all criminal actions for violations of the provisions of this act, and in all civil actions for the recovery or enforcement of fines, provided for in this act, and all such

actions, both criminal and civil, shall be instituted, prosecuted and tried in the district court.

(c) It shall be the duty of the county attorneys and deputy county attorneys, in their respective counties, diligently to attend all inquisitions held under the provisions of this act and diligently to prosecute all violations of the laws of the state relating to the provisions of this act. [L. '39, Ch. 204, § 22. Approved and in effect March 17, 1939.

2640.23. Constructions, exceptions, and limitations—foreign or interstate commerce. The license required by this act shall be in addition to any other license required by any statute of Montana or any municipality of the state of Montana. This act shall apply to every part of the state of Montana.

If any portion of this act is held invalid or unconstitutional such holding shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so held to be unconstitutional or invalid. No provision of this act shall apply or be construed to apply to foreign or interstate commerce except insofar as the same may be effective in compliance with the United States Constitution, and with the laws of the United States. It is the intention of the legislature, however, that the instant, whenever that may be, that the handling, within the state by a dealer, of milk produced outside of the state, becomes the subject of regulation by the state in the exercise of its police powers, the provisions of this act, affecting intrastate milk, shall immediately apply and the powers conferred by this act shall attach thereto. [L. '39, Ch. 204, § 23. Approved and in effect March 17, 1939.

2640.24. Additional remedies. The board or its authorized agent may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this act or to enforce compliance with any order, rule or regulation, of the board pursuant to the provisions of this act or to obtain a judicial interpretation of any of the foregoing, and in addition to any other remedy, the board, after unanimous consent of all members of the board, may apply to the district court of the district wherein the action arises, for relief by injunction, mandamus or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist, nor shall the board be required to give or post bond in any action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board in the name

of the Montana milk control board and it shall not be necessary in any action to which the board is a party that such action be brought by or against the state of Montana on relation of the Montana milk control board. The board shall have the power to institute action by its own attorney or counsellor, but it shall have the right, if it deems advisable, to call upon any county attorney to represent it in the district court, of the county in which the action is taken, or the attorney general to represent it on appeal to the supreme court of Montana, or it may associate its own counsellor with either in any court. [L. '39, Ch. 204, § 24. Approved and in effect March 17, 1939.

2640.25. Transfer of assets. All assets, appurtenances and funds of the previously existing milk control board are hereby transferred to the herein created board. [L. '39, Ch. 204, § 25. Approved and in effect March 17, 1939.

2640.26. Repeals. All acts or parts of acts in conflict herewith are hereby repealed. Statutes affected are sections 2639.1 to section 2640, inclusive, of the revised codes of Montana of 1935. [L. '39, Ch. 204, § 26. Approved and in effect March 17, 1939.

CHAPTER 245

ELECTRICAL CONSTRUCTION—REGULATION—MOVING STRUCTURES WHEN INTERFERENCE WITH POLES OR WIRES NECESSARY

Section

- 2707.1. National electric safety code—electric construction operated by rural electrification associations—conformance to code.
- 2707.2. Same—same—conflicting provisions of this chapter—superseded.
- 2707.3. Violation of act—penalty.
- 2711.1. Moving of structures—interference with electric wires.
- 2711.4. Interference with lines.

2707.1. National electric safety code — electric construction operated by rural electrification associations—conformance to code. That from and after the passage of this act all electrical construction conducted, and to be operated by any rural electrification association and constructed, and to be operated in pursuance of the authority of the rural electrification administration of the federal government, within the state of Montana shall be in conformity with the rules and regulations set forth in the national electrical safety code approved by the American engineering standards committee as published by the department of commerce of the United States

and any and all revisions thereof as the same may exist from time to time. [L. '39, Ch. 194, § 1. Approved and in effect March 17, 1939.]

Section 4 repeals conflicting laws.

2707.2. Same — same — conflicting provisions of this chapter — superseded. That the provisions of the national electrical safety code, as designated in section 1 [2707.1] hereof, wherever the same may be in conflict with or in any manner contravene the provisions of chapter 245 of the revised codes of Montana, 1935, shall be deemed and construed as superseding, amending and modifying the provisions of chapter 245 insofar as the provisions thereof conflict with the provisions of the national electrical safety code; provided that the provisions of this section shall apply only to electrical construction conducted and operated in pursuance of the authority of the rural electrification administration of the federal government. [L. '39, Ch. 194, § 2. Approved and in effect March 17, 1939.]

Section 4 repeals conflicting laws.

2707.3. Violation of act — penalty. Every person, firm or corporation which shall violate any provisions of this act shall be guilty of a misdemeanor. [L. '39, Ch. 194, § 3. Approved and in effect March 17, 1939.]

Section 4 repeals conflicting laws.

2711.1. Moving of structures — interference with electric wires. No person, firm or corporation moving, hauling or transporting any house, building, derrick or other structure shall cut, move, raise or in any manner interfere with an electric light or electric power wire or poles, or with telephone or telegraph wires or poles, without giving notice to the owner or agent of said wires or poles, as hereinafter provided. [L. '37, Ch. 174, § 1, amending R. C. M. 1935, § 2711.1. Approved and in effect March 18, 1937.]

Section 3 repeals conflicting laws.

2711.4. Interference with lines. It shall be unlawful for any person, firm or corporation engaged as principal or employer in moving any house, building, derrick or other structure, as provided in the above sections, to move, touch, cut, molest or in any way interfere with any electric light, electric power, telephone or telegraph wires, or any poles bearing any such wires, except in compliance with the provisions of this act. [L. '37, Ch. 174, § 2, amending R. C. M. 1935, § 2711.4. Approved and in effect March 18, 1937.]

Section 3 repeals conflicting laws.

CHAPTER 248

UNIFORM AERONAUTICS ACT

Section

2736.7. Lawfulness of flight—landings—recovery of damages—frightening livestock.

2736.7. Lawfulness of flight — landings — recovery of damages — frightening livestock. Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water, or in violation of the air commerce regulations which have been, or may hereafter be, promulgated by the department of commerce of the United States. The wilful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them, shall be deemed an unlawful use thereof, and actual and punitive damages, in addition to the penalties, provided by this act, may be recovered in an action for damages caused therefrom.

The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft of the pilot shall be liable for actual damage caused by such forced landing. [L. '39, Ch. 109, § 1, amending R. C. M. 1935, § 2736.7. Approved and in effect March 3, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 250

FOREST FIRE PROTECTION

Section

2763, 2764. Repealed.

2767, 2768. Repealed.

2770. Repealed.

2775-2778.4. Repealed.

2763, 2764. Repealed. [L. '39, Ch. 128, § 30. Approved and in effect March 9, 1939. See § 1840.30.]

2767, 2768. Repealed. [L. '39, Ch. 128, § 30. Approved and in effect March 9, 1939. See § 1840.30.]

2770. Repealed. [L. '39, Ch. 128, § 30. Approved and in effect March 9, 1939. See § 1840.30.]

2775-2778.4. Repealed. [L. '39, Ch. 128, § 30. Approved and in effect March 9, 1939. See § 1840.30.]

2778.2. Liability for extinguishment of forest fires.

1937. Defendant held property as vendor under an executory contract of sale wherein vendee held beneficial interest. In an action to recover damages for a forest fire originating on this land it was held that the defendant's title was that of security under the doctrine of equitable conversion and thus not liable under the statute. *First National Bank v. United States*, 92 Fed. (2d) 132.

1936. Action by the United States to recover cost of extinguishing forest fire originating on the land of the defendant who held title but for the purpose of conveying the same upon the payment of a balance due upon a mortgage. Held that the ownership was absolute and that the defendant came within the purview of the statute and liable under the same. (Note, reversed on appeal.) *United State v. First State Bank of Thompson Falls*, 17 Fed. Supp. 162.

CHAPTER 252

REGULATION OF THE MANUFACTURE, STORAGE AND SALE OF EXPLOSIVES

2786. Definitions.

1935. Gasoline or other products of crude oil are not explosives within the meaning of this section. *Purcell v. Davis*, 100 Mont. 480, 50 P. (2d) 255.

2806. Regulating sales of explosives.

1938. Cited in *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

2807. Storage of explosives in mines.

1938. Cited in *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

2808. Storage of explosives in cities, etc.

1938. Cited in *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

2809. Construction and location of magazines.

1938. Cited in *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

2810. Magazines, etc., to bear warning signs.

1938. Cited in *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

2811. Transportation of explosives with passengers forbidden, when.

1938. Cited in *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

2812. Careless use of explosives a misdemeanor.

1938. This section is a special provision covering the offense charged therein, and is to be regarded as an exception to the general provisions of section 2813. *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

1938. Since this section is a special provision and the crime denounced therein a misdemeanor, the punishment is controlled by section 10725, and not by section 2813, which is a general provision. *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

1938. An information which charged the defendant an accessory to the commission of a felony, namely a violation of section 1812, which is a misdemeanor, the information was defective. *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

2813. Penalties.

1938. This section is a general provision to which sections 2812 and 2814 are to be regarded as exceptions. *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

2814. Penalty when death caused by violation of this act.

1938. This section is a special provision covering the offense charged therein, and is to be regarded as an exception to the general provisions of section 2813. *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

CHAPTER 254

MONTANA BEER ACT

Section

2815.11. Definitions.

2815.12. Administration of act by liquor control board—power transferred from state board of equalization.

2815.13. Alcoholic content of beer—4 per cent limit—sale—ale, porter, and stout—liquor control board.

2815.17. Penalty for brewers' failure to file statement.

2815.25. Penalty for wholesalers' failure to file statement—payment of tax.

2815.25a. Brewer's failure to make return—board to make and fix tax—delinquency in—penalty—tax lien—partial release of lien.

2815.25b. Carriers—returns of beer brought into state—contents.

2815.52. Repealed.

2815.10. Citation of act.

1938. This act cited in *State ex rel. McIntire v. City Council of City of Libby*, 107 Mont. 216, 82 P. (2d) 587, holding nothing therein prohibits a city from limiting the number of beer or liquor licenses that may be issued.

1936. While neither sections 8642 nor 2815.60 et seq. make the sale of intoxicating liquor a nuisance, section 2815.10 et seq. make the sale of beer in violation a nuisance. *State ex rel. Nagle v. Naughton*, 103 Mont. 306, 63 P. (2d) 123.

1936. Maintenance of a cigar store where card games were played for money held a nuisance and it was abated by injunction ordering the removal of all fixtures, etc., used in conducting such nuisance, from the premises, that the fixtures be sold and proceeds used as provided by § 11130, that the premises be closed for one year, and that the operator, his servants, etc., be perpetually enjoined from conducting such nuisance. *State ex rel. Nagle v. Naughton*, 103 Mont. 306, 63 P. (2d) 123. See, also, *State ex rel. Nagle v. Antinoli*, 103 Mont. 321, 63 P. (2d) 129.

1936. Where the board of equalization had not exceeded its jurisdiction in suspending licenses of alleged violators of the beer act regulations a writ of prohibition was issued to the district court directing it to annul its order restraining the board from further proceedings against such alleged violators

and to dismiss the proceedings upon which the order was granted, since the court exceeded its jurisdiction in granting the order. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

2815.11. Definitions. In this act, the expression

(a) "Board" as used in this act means the Montana liquor control board, which shall administer the Montana beer act, under its provisions ex-officio and without additional compensation.

(b) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any other similar products in drinkable water.

(c) "Brewer" means any person having a factory or an establishment adapted for the making of beer.

(d) "Club" means any association of individuals for purposes of mutual entertainment and convenience and shall include the premises applied or used for any such purpose.

(e) "Club member" means a person who, whether as a charter member or admitted according to the by-laws or rules of the club, has become a member thereof who maintains his membership by the payment of his regular periodic dues in the manner provided by such rules or by-laws and whose name and address are entered in the list of membership supplied to the board at the time of the application for a club license under this act, or if admitted thereafter within ten (10) days after his admission.

(f) "Person" includes every partnership, corporation, or association.

(g) "Retailer" means any person engaged in the sale and distribution of beer, either on draught or in bottles, to the public to be served and consumed on the premises of such retailer, or in the sale or distribution of beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off such premises.

(h) "Vehicle" means any means of transportation by land or by water or by air and includes everything made use of in any way whatever for such transportation.

(i) "Wholesaler" means any person having a store or establishment for the sale and distribution of beer in wholesaling or jobbing quantities, or for the sale and distribution of beer in original packages to the public with intent that such packages shall be delivered or taken away from the premises of such wholesaler in unbroken package for consumption off the premises of such wholesaler. [L. '37, Ch. 30, § 6, amending R. C. M. 1935,

§ 2815.11. Approved and in effect February 18, 1937.

Section 11 repeals conflicting laws.

2815.12. Administration of act by liquor control board — power transferred from state board of equalization. The power and authority to administer the Montana beer act, heretofore vested in the state board of equalization, is hereby transferred from the state board of equalization to the Montana liquor control board, and all power and authority in regard to the administration of the Montana beer act is hereby vested in the Montana liquor control board. [L. '37, Ch. 30, § 7. Approved and in effect February 18, 1937.

Section 11 repeals conflicting laws.

1936. ✓ Power to make regulations for administration of the beer act was properly delegated to the board of equalization charged, by statute, with its enforcement, and such delegation was not a delegation of legislative power. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

1936. ✓ Where the board of equalization had not exceeded its jurisdiction in suspending licenses of alleged violators of the beer act regulations a writ of prohibition was issued to the district court directing it to annul its order restraining the board from further proceedings against such alleged violators and to dismiss the proceedings upon which the order was granted, since the court exceeded its jurisdiction in granting the order. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

2815.13. Alcoholic content of beer — 4 per cent limit — sale — ale, porter, and stout — liquor control board. Beer containing one half of one per cent ($\frac{1}{2}\%$), or more, of alcohol by volume and not more than three and two-tenths per cent (3.2%) of alcohol by weight, is hereby declared to be non-intoxicating and such beer and other beer permitted by the congress of the United States may be manufactured and sold; provided that beer containing not more than four per cent (4%) of alcohol by weight may be manufactured and/or sold or transported in and into this state or possessed therein in the manner and under conditions prescribed by the laws of this state and not otherwise. The sale of beer by the Montana liquor control board is hereby prohibited, save and except ale, porter and stout containing more than four per cent (4%) of alcohol by weight. [L. '37, Ch. 89, § 1, amending R. C. M. 1935, § 2815.13. Approved March 11, 1937; in effect April 1, 1937.

2815.17. Penalty for brewers' failure to file statement. Any such tax not paid within the time herein provided for shall be delinquent and a penalty of five per cent (5%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid, and any brewer who fails, neglects

or refuses to make the return to the board provided for in section 2815.16 hereof, or refuses to allow such examination, as provided for in section 2815.16 hereof, or fails to make an accurate return according to the manner prescribed, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one thousand dollars (\$1,000.00). [L. '39, Ch. 220, § 1, amending R. C. M. 1935, § 2815.17. Approved March 17, 1939; in effect 30 days later.

Section 5 repeals conflicting laws.

2815.25. Penalty for wholesalers' failure to file statement — payment of tax. With such return, the said wholesaler shall pay to the board the amount of tax upon all beer not manufactured in this state, on the basis hereinafter provided, which shall have been sold by him during such previous month. Any such tax not paid within the time herein provided for shall be delinquent and a penalty of five per cent (5%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid, and any wholesaler who fails, neglects or refuses to make the return to the board provided for in section 2815.24 hereof, or refuses to allow such examination as provided for in section 2815.24 hereof, or fails to make an accurate return according to the manner prescribed, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one thousand dollars (\$1,000.00). [L. '39, Ch. 220, § 2, amending R. C. M. 1935, § 2815.25. Approved March 17, 1939; in effect 30 days later.

Section 5 repeals conflicting laws.

2815.25a. Brewer's failure to make return — board to make and fix tax — delinquency in — penalty — tax lien — partial release of lien. If any brewer subject to the payment of the tax provided for in subdivision (3) of section 2815.22 hereof or any wholesaler subject to the payment of the tax provided for in section 2815.29 hereof, shall fail, neglect or refuse to make any return required by Montana beer act, or shall fail to make payment of such tax within the time herein provided, the board shall, forthwith after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of such tax due the state from such delinquent brewer or wholesaler and shall add thereto a penalty of five per cent (5%) thereof for the first failure,

wilful neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect or refusal, which shall be in addition to the five per cent (5%) penalty hereinbefore provided for non-payment of such tax within the time hereinbefore provided. Said tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such returns should have been made and said tax paid. The board shall then proceed to collect such tax with penalties and interest. Upon request of the board it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such tax. All taxes due from any brewer or wholesaler under the provisions of Montana beer act, together with all penalties and interest thereon, shall be a lien upon any and all property of such brewer or wholesaler upon the filing by the board of a duplicate copy of the statement so made by the board, or a certified copy of any return filed with said board, in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and may be enforced in the name of the state of Montana in the same manner as other liens are enforced by law. No action shall be maintained to enjoin the collection of such tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the board shall release the said lien by filing in the office of the county clerk wherein is filed the said lien a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the board may release from the operation of said lien a part of said property to enable the brewer or wholesaler to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said taxes, penalty and interest, provided there remains, in the judgment of the board, sufficient property subject to said lien to insure the payment of the whole of said unpaid taxes, penalty and interest. [L. '39, Ch. 220, § 3. Approved March 17, 1939; in effect 30 days later.

Section 5 repeals conflicting laws.

2815.25b. Carriers—returns of beer brought into state — contents. Every railroad and every motor carrier transporting beer manufactured out of this state from points without this state and delivering the same to points within this state shall, on or before the fifteenth day of each month, make an exact

return to the board of the amount of such beer so transported and delivered by such railroad or motor carrier during the previous month, and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered. [L. '39, Ch. 220, § 4. Approved March 17, 1939; in effect 30 days later.

Section 5 repeals conflicting laws.

2815.30. Retailers' license—application and issuance—display required—check of alcoholic content by board.

1936. ✓ Where the board of equalization had not exceeded its jurisdiction in suspending licenses of alleged violators of the beer act regulations a writ of prohibition was issued to the district court directing it to annul its order restraining the board from further proceedings against such alleged violators and to dismiss the proceedings upon which the order was granted, since the court exceeded its jurisdiction in granting the order. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

1936. ✓ The examination referred to in section 2815.45 is that mentioned in section 2815.30. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

2815.36. Qualifications of retail license.

1936. ✓ Where the board of equalization had not exceeded its jurisdiction in suspending licenses of alleged violators of the beer act regulations a writ of prohibition was issued to the district court directing it to annul its order restraining the board from further proceedings against such alleged violators and to dismiss the proceedings upon which the order was granted, since the court exceeded its jurisdiction in granting the order. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

2815.44. Fees for licenses—expiration date—regulation by cities and towns.

1938. ✓ This section cited in *State ex rel. McIntire v. City Council of City of Libby*, 107 Mont. 216, 82 P. (2d) 587, holding that a city may limit the number of beer or liquor licenses that may be issued.

2815.45 Revocation or suspension of license.

1936. ✓ Where the board of equalization had not exceeded its jurisdiction in suspending licenses of alleged violators of the beer act regulations a writ of prohibition was issued to the district court directing it to annul its order restraining the board from further proceedings against such alleged violators and to dismiss the proceedings upon which the order was granted, since the court exceeded its jurisdiction in granting the order. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

1936. ✓ The examination referred to in section 2815.45 is that mentioned in section 2815.30. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

2815.48. Common nuisance defined—misdemeanor—lien on premises—disposal of beer to minors.

Note. Compare § 2815.106a.

2815.49. Action to enjoin nuisance—injunction—order of court—bond.

Note. Compare § 2815.106b.

2815.52. Repealed. [L. '37, Ch. 30, § 10. Approved and in effect February 18, 1937.

Section 11 repeals conflicting laws.

CHAPTER 255

STATE LIQUOR CONTROL ACT OF MONTANA

Section

- 2815.63. Montana liquor control board—creation—qualification of members—terms of office—removal—appointment—compensation—expenses—chairman—liquor administrator—oaths—powers and duties—delegation—fixing salaries—assistant liquor administrator.
- 2815.65. State liquor administrator—oath and bond—devotion of entire time to office—outside compensation.
- 2815.66. State liquor administrator and assistant—term of office.
- 2815.69. State liquor stores—maintenance—powers and duties of liquor board—when stores to be open—fixing of prices.
- 2815.75. Liquor stores—days when closed.
- 2815.77. Permits for residents and temporary residents—special permits—fees.
- 2815.106a. Premises on which liquor manufactured or sold illegally declared nuisance—penalty.
- 2815.106b. Illegal sale—premises—nuisance—injunction—jurisdiction—duty of board—bond—removal of fixtures—decree—procedure.
- 2815.154. Disposition of money received—board's duty—obligations not debt of state.
- 2815.164. Liquor control—public policy of state.
- 2815.165. Definitions.
- 2815.166. Liquor control board—retail license—issuance.
- 2815.167. License fees—amount—fee for railway system—fraternal organization—club—federal census as basis for determining population.
- 2815.168. License—applicant—prior approval by local authorities—false statement—penalty.
- 2815.169. Applicants—investigation.
- 2815.170. Sales in dining cars and buffets—licenses.
- 2815.171. License—contents—provisions governing—expiration.
- 2815.172. One license per year—beer license—necessity.
- 2815.173. Person disqualified—renewals—citizens.
- 2815.174. Sales by licensee—restrictions—minors—intoxicated persons—habitual drunkards—interdicted persons.
- 2815.175. Sales—hours—restrictions.
- 2815.176. Premises—proximity to church or school—exceptions.
- 2815.177. Sales to licensees—authority of board—posted price—for cash—excise tax.
- 2815.178. Excise tax—collection by liquor board—disposition.
- 2815.179. Invoices—duplicates—contents—disposition.

Section

- 2815.180. Licensees — sales — liquor not purchased from state store—penalty.
- 2815.181. Sales without license—penalty.
- 2815.182. Sales—less than posted price.
- 2815.183. Employees of board—dealing in liquor.
- 2815.184. Liquor unlawfully possessed—seizure by officers—forfeiture.
- 2815.185. Rules and regulations—board to make—forms—records.
- 2815.186. Licensees — investigation of — licenses — suspension — revocation — violations of act.
- 2815.187. Complaints against licensees—procedure — default — license — revocation or suspension.
- 2815.188. Complaint against licensees — hearing — decision by board—appeal to district court—trial—appeal bond.
- 2815.189. Premises of licensee—inspection—railway cars—board or officer.
- 2815.190. License—renewal of suspended — revocation.
- 2815.191. Cities and counties—may impose license —fee.
- 2815.192. Moneys received—allocation.
- 2815.193. Issuance of licenses—suspension of act—local option—election.
- 2815.194. Notice of election—publication.
- 2815.195. Ballots—form.
- 2815.196. Polling places.
- 2815.197. Election — effect — sale — when local option vote is “no”.
- 2815.198. Election—contest.
- 2815.199. Local option election—second election.
- 2815.200. Business operated in name of licensee only—United States permits—necessity.
- 2815.201. Violation of act — penalty — license — revocation.
- 2815.202. Partial invalidity saving clause—application of act.
- 2815.203. Repeals of conflicting laws.
- 2815.204. Effective date of act.

2815.60. Citation of state liquor control act.

1936.✓ The liquor control act of 1933 held not unconstitutional as providing for the support of the state by other means than property taxation or license tax. *State v. Driscoll*, 101 Mont. 348, 54 P. (2d) 571.

1936.✓ The liquor control act of 1933 is not unconstitutional as violating the constitutional provision that all bills for raising revenue shall originate in the house of representatives; it having originated in the senate. *State v. Driscoll*, 101 Mont. 348, 54 P. (2d) 571.

1936.✓ The Montana liquor control act, Laws of 1933, Chapter 105, held not unconstitutional as violative of Const. Art. 5, § 23, in regard to the requirements as to the titles of acts. *State v. Driscoll*, 101 Mont. 348, 54 P. (2d) 571.

1936.✓ The maxim “*inclusio unius est exclusio alterius*,” being only a rule of interpretation and not a constitutional command, held that the two methods of taxation mentioned or provided for in section 1 of article 12 of the constitution are not exclusive, and that the legislature has the power to adopt other methods of taxation which are not prohibited by some other section of the constitution. *State v. Driscoll*, 101 Mont. 348, 54 P. (2d) 571.

1936.✓ Maintenance of a cigar store where card games were played for money held a nuisance and it was abated by injunction ordering the removal of

all fixtures, etc., used in conducting such nuisance, from the premises, that the fixtures be sold and proceeds used as provided by § 11130, that the premises be closed for one year, and that the operator, his servants, etc., be perpetually enjoined from conducting such nuisance. *State ex rel. Nagle v. Naughton*, 103 Mont. 306, 63 P. (2d) 123. See, also, *State ex rel. Nagle v. Antinoli*, 103 Mont. 321, 63 P. (2d) 129.

1936.✓ While neither sections 8642 nor 2815.60 et seq. make the sale of intoxicating liquor a nuisance, section 2815.10 et seq. make the sale of beer in violation a nuisance. *State ex rel. Nagle v. Naughton*, 103 Mont. 306, 63 P. (2d) 123.

1936.✓ This act does not violate section 8, clause 3, of article 1 of the federal constitution providing that congress shall have the power to regulate commerce with foreign states and among the several states. *State v. Andre*, 101 Mont. 366, 54 P. (2d) 566.

1936.✓ This statute in providing for the sale of liquor by state stores was authorized as an exercise of the police power. *State v. Andre*, 101 Mont. 366, 54 P. (2d) 566.

2815.63. Montana liquor control board — creation — qualification of members — terms of office — removal — appointment — compensation — expenses — chairman — liquor administrator — oaths — powers and duties — delegation — fixing salaries — assistant liquor administrator. The “Montana liquor control board” shall consist of three members not more than two of whom shall be of the same political party to be appointed by the governor, with the advice and consent of the senate, and each of said members shall have been a resident of the state of Montana for a period of five years and a citizen of the United States and of the state of Montana. Each member of the Montana liquor control board shall hold office for a term of four years and until his successor is appointed and qualified, provided, however, that in the appointment of the members of the first board to be appointed, under the terms of this act, one of such members shall be appointed to hold office for a term of two years, and two of such members shall be appointed to hold office for a term of four years; and provided, further, that the members of said board may be removed from office at any time by the governor, for cause. The governor shall designate the term of service of each member first appointed, so that the term of one shall end March 1, 1939, and the term of two shall expire March 1, 1941. Each succeeding member shall hold his office for a term of four years and until his successor shall be appointed and shall have qualified. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the 31st day of January during the biennial session of the legislature, next preceding the commencement of the term for which the appointment is made; provided, that the governor shall nominate and transmit to the state senate the

names of the first members of the said board, on or before the 3rd day of March, 1937. Each of the members of the Montana liquor control board shall receive, as compensation for his official services, the sum of ten dollars (\$10.00) per diem, for each day actually engaged in the duties of his office, including his time of travel between his home and place of employment of such duties, together with the traveling expenses while away from home in the performance of the duties of his office, the maximum amount each member of the commission shall receive for per diem shall not exceed five hundred dollars (\$500.00) per annum. The board shall hold its meetings at the city of Helena or at such other places as may be designated by the board. The board shall choose one of its own members as chairman, and shall appoint a state liquor administrator, who shall not be a member of the board and who shall be ex-officio the secretary of the board. The board may also, in its discretion, appoint an assistant state liquor administrator and other employees. Each member of the board shall take and file the constitutional oath of office before entering the performance of his duties, and he shall give bond conditioned for the faithful performance of his duties, in the sum of twenty-five thousand dollars (\$25,000.00). A majority of the members of the board shall constitute a quorum for the transaction of business. The board shall have the powers and duties herein specified and the administration of the state liquor control act of Montana and the Montana beer act, including the general control, management and supervision of all state liquor stores, but the board is authorized to delegate to the state liquor administrator the general control, management and supervision of all state liquor stores, including the power to purchase supplies for same and the power to hire and discharge employees of the board, subject, however, to such regulations and restrictions as the board may impose upon the state liquor administrator.

The board shall fix the salary of the state liquor administrator in such sum as it deems advisable, not exceeding five thousand dollars (\$5000.00) per year, and it shall fix the salary of the assistant state liquor administrator at such sum as it deems advisable, not exceeding four thousand dollars (\$4000.00) per year. The board shall fix the salaries of all other employees of the board, but in no case shall the salaries of such other employees exceed the sum of three thousand dollars (\$3000.00) per year.

The assistant state liquor administrator shall exercise such powers and perform such duties in the administration of the state liquor control act and Montana beer act as the board

may prescribe. [L. '37, Ch. 30, § 1, amending R. C. M. 1935, § 2815.63. Approved and in effect February 18, 1937.]

Section 11 repeals conflicting laws.

2815.65. State liquor administrator — oath and bond — devotion of entire time to office — outside compensation. The state liquor administrator, before entering upon the performance of his duties, shall take and file the constitutional oath of office and he shall give bond in such sum as the board may determine, and he shall devote his whole time and attention to the administration of the state liquor control act of Montana and the Montana beer act and shall receive no other compensation from any source whatsoever, or follow no other occupation. [L. '37, Ch. 30, § 2, amending R. C. M. 1935, § 2815.65. Approved and in effect February 18, 1937.]

Section 11 repeals conflicting laws.

2815.66. State liquor administrator and assistant — term of office. The state liquor administrator and the assistant state liquor administrator, if one is appointed by the board, shall hold office during the pleasure of the board. [L. '37, Ch. 30, § 3, amending R. C. M. 1935, § 2815.66. Approved and in effect February 18, 1937.]

Section 11 repeals conflicting laws.

2815.67. Functions, powers and duties of board.

1936. ✓ A defendant in a prosecution for violating this act, but not the regulations made by the board, cannot raise the constitutional question of validity of that provision of the act which confers on the board the power to make regulations for the administration of the act. *State v. Andre*, 101 Mont. 366, 54 P. (2d) 566.

2815.68. Regulations may be made by board — scope of regulations.

1936. ✓ The court will not take judicial notice of the regulations made by the state liquor control board. *State v. Andre*, 101 Mont. 366, 54 P. (2d) 566.

1936. ✓ A defendant in a prosecution for violating this act, but not the regulations made by the board, cannot raise the constitutional question of validity of that provision of the act which confers on the board the power to make regulations for the administration of the act. *State v. Andre*, 101 Mont. 366, 54 P. (2d) 566.

2815.69. State liquor stores — maintenance — powers and duties of liquor board — when stores to be open — fixing of prices. The board shall establish and maintain at county seats and such other places as the board deems advisable, one or more stores to be known as "state liquor stores", for the sale of liquor in accordance with the provisions of this act and the regulations made thereunder, and the board may, from time to time, fix the prices

at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. Such state liquor stores shall be and remain open during such period of the day as the board shall deem advisable, provided, however, that such stores shall be closed for the transaction of business on Sundays, legal holidays, and election days. [L. '37, Ch. 30, § 4, amending R. C. M. 1935, § 2815.69. Approved and in effect February 18, 1937.]

Section 11 repeals conflicting laws.

1936/ This statute in providing for the sale of liquor by state stores was authorized as an exercise of the police power. *State v. Andre*, 101 Mont. 366, 54 P. (2d) 566.

2815.75. Liquor stores — days when closed.

No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor

(a) on any holiday;

(b) on any day on which polling takes place at any national or state election held in the electoral district in which the store is situated;

(c) on any day on which polling takes place at any municipal election held in the municipality in which the store is situated;

(d) during such other period and on such other days as the board may direct. [L. '37, Ch. 30, § 5, amending R. C. M. 1935, § 2815.75. Approved and in effect February 18, 1937.]

Section 11 repeals conflicting laws.

2815.77. Permits for residents and temporary residents — special permits — fees. (1) There shall be two classes of permits under this act:

(a) Individual permits;

(b) Special permits.

(2) Upon application in the prescribed form being made to the board, or to any official authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the board, or such official being satisfied that the applicant is entitled to a permit for the purchase of liquor under this act, the board or such official shall issue to the applicant a permit of the class applied for, as follows:

(a) An "individual permit" in the prescribed form may be granted to an individual of the full age of twenty-one years, who has resided in the state, for the period of at least one month immediately preceding the date of his making the application, and who is not disqualified under this act, entitling the applicant to purchase liquor for beverage, medicinal or culinary purposes, in accordance

with the terms and provisions of the permit, and the provisions of this act, and the regulations made thereunder;

(b) An "individual permit" in the prescribed form may be granted to an individual of the full age of twenty-one years, who is temporarily resident or sojourning in the state, and who is not disqualified under this act, entitling the applicant during a period not exceeding one month to purchase liquor for beverage, medicinal, or culinary purposes, in accordance with the terms and provisions of the permit, and the provisions of this act and the regulations made thereunder.

(c) A "special permit" in the prescribed form may be granted to a druggist, physician, dentist, or veterinary, or to a person engaged within the state in mechanical or manufacturing business, or in scientific pursuits, requiring liquor for use therein, entitling the applicant to purchase liquor for the purpose named in such "special permit", and in accordance with the terms and provisions of such "special permit" and in accordance with the provisions of this act, and the regulations made thereunder;

(d) A "special permit" in the prescribed form may be granted, to a minister of the gospel, entitling the applicant to purchase wine for sacramental purposes only in accordance with the terms and provisions of such "special permit";

(e) A "special permit" in the prescribed form may be granted, when authorized by the regulations, entitling the applicant to purchase liquor for the purpose named in the permit and in accordance with the terms and provisions of such permit, and of this act, and the regulations made thereunder.

(3) (a) For an individual permit under clause (a) of subsection 2 hereof—

Entitling holder to purchase spirits, wine, beer and malt liquor, the fee shall be fifty cents;

Entitling holder to purchase beer only, the fee shall be fifty cents;

Entitling holder to make a thirty day purchase, whether of spirits, wine, beer or malt liquor, the fee shall be twenty-five cents;

(b) For an individual permit under clause (b) of subsection 2 hereof—

Entitling holder to purchase spirits, wine, beer or malt liquor, the fee shall be fifty cents;

Entitling holder to make a single purchase whether of spirits, wine, beer or malt liquor, the fee shall be twenty-five cents;

(c) The fees for a "special permit" under clauses (c), (d) and (e) of subsection 2 hereof

shall be fixed and determined by the regulations made hereunder.

(4) No one, who has been convicted of keeping, frequenting or being an inmate of a disorderly house, shall be entitled to a permit until after the expiration of one year from the date of such conviction.

(5) Notwithstanding any other provisions of this act, the board may in its discretion cancel any subsisting permit or refuse or direct any official authorized to issue permits to refuse to issue a permit to any person and no official so directed shall issue any such permit. [L. '37, Ch. 3, § 1, amending R. C. M. 1935, § 2815.77. Approved and in effect February 2, 1937.]

Section 2 repeals conflicting laws.

2815.104. Sale of liquor unlawful, when—foreign substance in liquor forbidden—possession of liquor, when unlawful.

1936. ✓ Information for violation of this section held not uncertain and ambiguous as not describing the particular kind of liquor which was in the possession of defendant and offered for sale, nor as to whom he exposed it for sale, where the offense was charged in the language of the statute. *State v. Driscoll*, 101 Mont. 348, 54 P. (2d) 571.

1936. ✓ By the provisions of § 2815.148 original jurisdiction was conferred on the district court in all criminal actions for violations of the liquor control act of 1933. *State v. Driscoll*, 101 Mont. 348, 54 P. (2d) 571.

2815.106a. Premises on which liquor manufactured or sold illegally declared nuisance—penalty. Any room, house, building, boat, vehicle, structure or place where intoxicating liquor is knowingly manufactured, sold, or bartered, in violation of the state liquor control act of Montana and all property knowingly kept and used in maintaining the same is hereby declared to be a common "nuisance", and any person who maintains such a common nuisance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) and by imprisonment not less than thirty days, nor more than six months. [L. '37, Ch. 30, § 8. Approved and in effect February 18, 1937.]

Section 11 repeals conflicting laws.

Note. Compare § 2815.48.

2815.106b. Illegal sale—premises—nuisance—injunction—jurisdiction—duty of board—bond—removal of fixtures—decree—procedure. An action to enjoin any nuisance defined in this act, may be brought in the name of the state of Montana by the attorney general of the state or any county attorney. Such action shall be brought and tried as an action in equity, and may be brought in any

court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits, or otherwise, to the satisfaction of the court or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue, restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may require from the applicant for such restraining order a bond in such sum as deemed advisable, if such application be made by a person other than a duly qualified and acting officer of the state or any political sub-division thereof and upon approval of such bond by the judge of said court issue an order restraining the defendant and all other persons from removing the fixtures or other things used in connection with the violation of this act, constituting such nuisance. Such action shall be prosecuted and tried in the same manner and the court shall grant the same relief as in suits to abate nuisances for violation of the Montana beer act. [L. '37, Ch. 30, § 9. Approved and in effect February 18, 1937.]

Section 11 repeals conflicting laws.

Note. Compare § 2815.49.

2815.148. District court to have jurisdiction of offenses.

1936. By the provisions of § 2815.148 original jurisdiction was conferred on the district court in all criminal actions for violations of the liquor control act of 1933. *State v. Driscoll*, 101 Mont. 348, 54 P. (2d) 571.

2815.154. Disposition of money received—board's duty—obligations not debt of state. All moneys received from the sale of liquor at the state liquor stores or from license fees or taxes or otherwise, arising in the administration of this act, shall be paid to the board, and the board is hereby authorized to make such expenditures as from time to time becomes necessary in the administration of this act, including in such expenditures all salaries, expenses of officers, agents and employees, and all proper expenditures incurred in acquiring property and merchandise in connection with the administration of this act, and no obligation created or incurred by the board shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the board solely from funds derived from the operation of state liquor stores, and the board shall pay into the state treasury the receipts from all taxes and licenses by it collected, and also the net proceeds from the operation of state liquor stores. [L. '39, Ch. 54, § 1, amending R. C. M.

1935, § 2815.154. Approved and in effect February 24, 1939.

Section 2 repeals conflicting laws.

2815.164. Liquor control — public policy of state. It is hereby declared as the policy of the state that it is necessary to further regulate and control the sale and distribution within the state of alcoholic beverages, and to eliminate certain illegal traffic in liquor now existing, and to insure the entire control of the sale of liquor in the Montana liquor control board, it is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the said board be empowered and authorized to grant licenses to persons qualified under this act, to sell liquor purchased by them at state liquor stores at retail posted price in accordance with this act and under rules and regulations promulgated by the said board, and under its strict supervision and control, and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this act. The restrictions, regulations and provisions contained in this act are enacted by the legislature for the protection, health, welfare and safety of the people of the state. [L. '37, Ch. 84, § 1. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

1938. ✓ This act cited in *State ex rel. McIntire v. City Council of City of Libby*, 107 Mont. 216, 82 P. (2d) 587, holding that a city may limit the number of beer or liquor licenses that may be issued.

1938. ✓ The liquor control act, section 2815.164 et seq. (Laws of 1937, Ch. 84) is not a law relating to appropriations of money within the purview of Art. 5, § 1 of the constitution in regard to referendums. *State ex rel. Haynes v. District Court*, 106 Mont. 470, 78 P. (2d) 937.

1938. ✓ The liquor control act, sections 2815.164 to 2815.204 (Ch. 84 of the Laws of 1937), is neither an emergency act nor an appropriation act, and is subject to referendum. *State ex rel. Haynes v. District Court*, 106 Mont. 470, 78 P. (2d) 937.

1938. ✓ The main purpose of § 2815.164 et seq. is to regulate the liquor traffic in Montana. *State ex rel. Haynes v. District Court*, 106 Mont. 470, 78 P. (2d) 937.

1938. ✓ The liquor control act, sections 2815.164 to 2815.204, was not passed in an effort to produce revenue to balance the budget, and was not an appropriation measure. *State ex rel. Haynes v. District Court*, 106 Mont. 470, 78 P. (2d) 937, holding that there is a very decided difference between an appropriation and an allocation.

1938. ✓ A writ of supervisory control was entertained by the supreme court to compel the district court to quash its order restraining the submission of § 2815.164 et seq. (Laws of 1937, Ch. 84) to a referendum, in *State ex rel. Haynes v. District Court*, 106 Mont. 470, 78 P. (2d) 937, on the ground that an appeal would not afford adequate relief.

2815.165. Definitions. The following words and phrases used in this act shall be given the following interpretation:

1. "Board" means the Montana liquor control board.

2. "Club" means a national fraternal organization, except college fraternities, or an association of individuals organized for social purposes and not for profit, with a permanent membership and an existence of two years prior to making application for license with permanent quarters or rooms.

3. "State liquor stores" means a liquor store established and operated by the Montana liquor control board under the laws of Montana.

4. "License" means a license issued by the Montana liquor control board to a qualified person, under which it shall be lawful for the licensee to sell and dispense liquor at retail as provided in this act.

5. "Licensee" means the person to whom a license is issued.

6. "Person" means every individual, co-partnership, corporation, hotel, restaurant, club and fraternal organization, and all licensed retailers of liquor, whether conducting the business singularly or collectively.

7. "Liquor" means all kinds of liquor sold by and/or in a state liquor store.

8. "Interdicted person" means a person to whom the sale of liquor is prohibited under the laws of Montana.

9. "Rules and regulations" means rules and regulations made and promulgated by the Montana liquor control board in accordance with the provisions of this act.

All other words and phrases used in this act, the definition of which is not herein given, shall be given the ordinary meaning. [L. '37, Ch. 84, § 2. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.166. Liquor control board — retail license — issuance. The Montana liquor control board is hereby empowered, authorized and directed to issue licenses to qualified applicants as herein provided, whereby the licensee shall be authorized and permitted to sell liquor at retail, and upon the issuance of such license the licensee therein named shall be authorized to sell liquor at retail but only in accordance with the rules and regulations promulgated by the said board and the provisions of this act. Qualified applicants shall include persons, hotels, clubs, fraternal organizations and railway systems. [L. '37, Ch. 84, § 3. Approved March 5, 1937. Adopted by

referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.167. License fees — amount — fee for railway system — fraternal organization — club — federal census as basis for determining population. Each licensee licensed under the provisions of this act shall pay an annual license fee as follows:

(a) Except as hereinafter provided, for each license outside of cities, towns and villages, or in cities, towns or villages with a population of less than two thousand (2,000), two hundred dollars (\$200.00) per annum;

(b) Except as hereinafter provided, for each license in cities with a population of more than two thousand (2,000) and less than five thousand (5,000), three hundred dollars (\$300.00) per annum;

(c) Except as hereinafter provided, for each license in cities with a population of more than five thousand (5,000) and less than ten thousand (10,000), or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, four hundred fifty dollars (\$450.00) per annum;

(d) For each license in cities with a population of ten thousand (10,000) or more, or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, six hundred dollars (\$600.00) per annum;

(e) For each railway system in the state of Montana, three hundred dollars (\$300.00) per annum;

(f) For each fraternal organization or club, one hundred dollars (\$100.00) per annum, provided, however, that the term "fraternal organization" as here used, shall include only those lodges and associations having a known and defined existence; and provided, however, that the term "club" as here used, shall mean an association of persons for the promotion of some common object other than the sale of liquor, with a permanent membership into which admission cannot be obtained by any person at his pleasure and which is primarily operated for the benefit of its members and not for the gain or profit of its operators; and provided, further, that it shall be unlawful for any fraternal organization or club to sell or serve liquor to the public as a commercial business and the board may at any time require such fraternal organization or club to furnish evidence of its bona fide existence and may refuse or suspend a license if it is

found that such applicant or licensee does not conform or is not conforming to this act.

The license fees herein provided for are exclusive of and in addition to other license fees chargeable in the state of Montana for the sale of liquor, beer and malt beverages.

The census taken under the direction of congress of the United States in the year nineteen hundred and thirty, and every ten years thereafter, shall be the basis upon which the respective populations of said municipalities shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such later direct enumeration shall constitute such basis, provided, however, that no census hereafter taken shall be such basis until it shall have been published under the authority under which the same shall be taken, and then its effect shall from the date of such publication be prospective only and provided, further, that none of the provisions of this act shall be deemed to operate retroactively. [L. '39, Ch. 221, § 1, amending L. '37, Ch. 84, § 4, adopted by referendum vote of people November 8, 1938, and effective by governor's proclamation January 21, 1939. Amendment approved and in effect March 17, 1939.]

2815.168. License — applicant — prior approval by local authorities — false statement — penalty. Prior to the issuance of a license by the Montana liquor control board, any applicant for such license shall have first appeared before the licensing authority of the incorporated city or town in which the premises are to be licensed, or if such premises are situate outside of the boundaries of an incorporated city or town, the applicant for a license shall have appeared before the county commissioners of the county in which the premises are to be licensed, and from such authorities receive written approval of the application for license; whereupon the applicant shall file such written approval, properly authenticated by such city licensing authorities or board of county commissioners, along with an application in writing, to the Montana liquor control board, signed by the applicant, and containing such information and statements relative to the applicant and the premises where the liquor is to be sold, as may be required by the Montana liquor control board. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths. If any false statement is made in any part of said application, the applicant, or applicants, shall be deemed guilty of misdemeanor and upon conviction thereof the license, if issued, shall be revoked and the

applicant, or applicants, subjected to the penalties provided by law.

And provided that nothing herein shall be construed as granting any additional powers to any city or county licensing board relating to the limitations of this act not herein expressly conferred. [L. '39, Ch. 221, § 2, amending L. '37, Ch. 84, § 5, adopted by referendum vote of people November 8, 1938, and effective by governor's proclamation January 21, 1939. Amendment approved and in effect March 17, 1939.

2815.169. Applicants — investigation. Upon receipt of an application for a license under this act, accompanied by the necessary license fee and bond, the board shall within thirty (30) days thereafter, cause to be made a thorough investigation of all matters pertaining thereto, and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business, and whether the requirements of this act and the rules and regulations promulgated by the board are met and complied with. [L. '37, Ch. 84, § 6. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.170. Sales in dining cars and buffets — licenses. Any railroad operating a dining and buffet car in connection with regular operated train service desiring a license to sell liquor under the provisions of this act in said dining and buffet car, shall first apply to the board for a license so to do, accompanying the application with the license fee herein prescribed. Upon being satisfied from said application, or otherwise, that the applicant is qualified, the board shall issue a license to such railroad for the sale of liquor by such carrier in all of its dining and buffet cars, which shall at all times be prominently displayed in the cars where liquor is served. Upon the payment of the one license fee herein required to be paid, duplicates of said license shall be provided by the board, to be posted in the different cars operated within the state under the one license. [L. '37, Ch. 84, § 7. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.171. License — contents — provisions governing — expiration. Every license issued under this act shall set forth the name of the person to whom issued, the location by street and number of the premises where the business is to be carried on under said license, and such other information as the board shall

deem necessary. If issued to a partnership the names of the persons conducting the business. Such license shall be signed by the licensee, shall be non-transferable except and only with the consent of the board, shall be posted in a conspicuous place on the premises in respect to which it is issued and shall be exhibited to any duly authorized representative of the board whenever the same is requested. Every license issued under the provisions of this act is separate and distinct, and no person, except the licensee therein named, shall exercise any of the privileges granted thereunder, and all licenses are applicable only to the premises in respect to which they are issued. All licenses shall expire on January first of each year. [L. '37, Ch. 84, § 8. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.172. One license per year—beer license —necessity. No person shall be granted more than one license in any year. No person, club, or fraternal organization shall be entitled to a license under this act unless such person, club, or fraternal organization shall have a beer license issued under the laws of Montana. [L. '37, Ch. 84, § 9. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

1938. ✓ This section cited in State ex rel. McIntire v. City Council of City of Libby, 107 Mont. 216, 82 P. (2d) 587, holding that a city may limit the number of beer or liquor licenses that may be issued.

2815.173. Person disqualified — renewals — citizens. No license shall be issued by the board to:

1. A person who has been convicted of being the keeper or is keeping a house of ill fame.

2. A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, or the laws of the federal government or the state of Montana.

3. A person whose license issued under this act has been revoked for cause.

4. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

5. A person who is not qualified or whose premises do not conform to the provisions of this act, or with the rules and regulations promulgated by the board.

6. A person who is not a citizen of the United States and who has not been a citizen of the state of Montana for at least five (5) years and who has not been a citizen of the county in which the license is to be issued for at least one (1) year. [L. '37, Ch. 84, § 10. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.174. Sales by licensee — restrictions — minors — intoxicated persons — habitual drunkards — interdicted persons. No licensee or his or her employee or employees shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any liquor, beer or wine to:

1. Any person under the age of twenty-one (21) years.

2. Any intoxicated person or any person actually, apparently or obviously intoxicated.

3. A habitual drunkard.

4. An interdicted person.

5. Any minor, Indian or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining liquor, beer or wine from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 38 [2815.201] of this act. [L. '39, Ch. 221, § 3, amending L. '37, Ch. 84, § 11, adopted by referendum vote of the people November 8, 1938, and effective by governor's proclamation January 21, 1939. Amendment approved and in effect March 17, 1939.

2815.175. Sales — hours — restrictions. No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail during the following hours:

(a) Sunday, from two a. m. to one p. m.;

(b) On any other day between two a. m. and eight a. m.;

(c) On any day of a general or primary election during the hours when the polls are open, excepting bond elections. When any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which the sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town. [L. '37, Ch. 84, § 12. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.176. Premises — proximity to church or school — exceptions. No license shall be granted for any premises which shall be on the same street or avenue and within six hundred feet of a building occupied exclusively as a church, synagogue or other place of worship, or school, except a commercially operated school; the measurements to be taken in a straight line from the center of the nearest entrance of such school, church, synagogue or other place of worship to the center of the nearest entrance of the premises to be licensed; except, however, that no license shall be denied because such restriction may apply to any premises so located which are maintained as a bona fide hotel, restaurant, railway car, club or fraternal organization or society except similar places of business established and in actual operation for one year prior to the passage and approval of this act. [L. '37, Ch. 84, § 13. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.177. Sales to licensees — authority of board — posted price — for cash — excise tax. The board is hereby authorized to sell through its stores all kinds of liquor, wine and cordials kept in stock to licensees licensed under this act at the posted price thereof in the store in which said liquor is sold. All sales shall be upon a cash basis. The posted price as used herein shall mean the retail price of such liquor as fixed and determined by the Montana liquor control board and in addition thereto an excise tax as in this act provided. [L. '37, Ch. 84, § 14. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.178. Excise tax — collection by liquor board — disposition. The Montana liquor control board is hereby authorized and directed to charge, receive and collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of eight per centum of the retail selling price on all liquor so sold and delivered. The Montana liquor control board shall retain the amount of such excise tax received in a separate account and shall deposit with the state treasurer, to the credit of the general fund, such sums so collected and received not later than the tenth (10th) day of each and every month. [L. '39, Ch. 41, § 1, amending L. '37, Ch. 84, § 15. Approved and in effect February 21, 1939.

Section 2 repeals conflicting laws.

2815.179. Invoices — duplicates — contents — disposition. The state liquor store shall upon each and every sale of liquor to any licensee, issue a duplicate invoice of the liquor purchased as provided by said board, a copy of which shall be delivered to the licensee and one copy retained at such store. The invoice shall show the date of purchase, name of employee making the sale, the quantity of each kind of liquor purchased, the price paid therefor, the name of the licensee and the number of the license, with such other information as may be required by the board. The licensee shall keep and retain his duplicate invoice of all purchases made by him from the state liquor store, which shall at all times be subject to inspection by the duly authorized officers, agents and employees of the board. [L. '37, Ch. 84, § 16. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.180. Licensees — sales — liquor not purchased from state store — penalty. It shall be unlawful for any licensee to sell or keep for sale and/or have on his premises for any purpose whatever, any liquor except that purchased from the state liquor store, and any licensee found in possession of, or selling and keeping for sale, any liquor which was not purchased from a state liquor store, shall, upon conviction, be fined not less than five hundred dollars (\$500.00) nor more than fifteen hundred dollars (\$1500.00), or by imprisonment for not less than three (3) months nor more than one (1) year, or both such fine and imprisonment, and if the board shall be satisfied that any such liquor was knowingly sold or kept for sale within the licensed premises by such licensee, or by his agents, servants or employees, it shall be mandatory that said board immediately revoke the license of said licensee. [L. '37, Ch. 84, § 17. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.181. Sales without license — penalty. Any person, who has not been issued a license under this act, who shall sell or keep for sale any alcoholic liquor, shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars (\$1000.00) nor more than five thousand dollars (\$5000.00), or be imprisoned in the state prison for not less than one (1) nor more than five (5) years, or both such fine and imprisonment. [L. '37, Ch. 84, § 18. Approved March 5, 1937. Adopted by referendum vote of the people

November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.182. Sales — less than posted price. It shall be unlawful for any licensee under the provisions of this act to resell any liquor purchased by such licensee from a state liquor store for a sum less than the posted price established by the said store and paid by the licensee therefor. [L. '37, Ch. 84, § 19. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.183. Employees of board — dealing in liquor. No member or employee of the board, including those engaged in the sale of liquor at the various state liquor stores, shall be directly or indirectly engaged in dealing in liquor whether as owner, part owner, member of a syndicate, share holder or otherwise, whether for his own benefit or in a fiduciary capacity for others. [L. '37, Ch. 84, § 20. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.184. Liquor unlawfully possessed — seizure by officers — forfeiture. Any sheriff, police officer, or inspector appointed under this act, who shall find any alcoholic beverages, liquor or moonshine which is kept or held by any person for sale or other disposition in violation of this act, may forthwith seize and remove the same, and keep the same as evidence, and upon conviction of a person for violation of the provisions hereof, the said liquor and all packages containing the same shall be forfeited to the state of Montana, and in addition the person so violating the law shall be subject to the penalties herein prescribed. [L. '37, Ch. 84, § 21. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.185. Rules and regulations — board to make — forms — records. For the purpose of the administration of this act the board shall make, promulgate and publish such rules and regulations as the said board may deem necessary for carrying out the provisions of this act and for the orderly and efficient administration hereof, and except as may be limited or prohibited by law and the provisions of this act, such rules and regulations so made and promulgated shall have the force of statute. Every licensee shall advise himself of such rules and regulations, and ignorance

thereof shall be no defense. Without limiting the generality of the foregoing provision, the said board shall be empowered and it is made its duty to prescribe forms to be used in the administration of this act, the proof to be furnished and the conditions to be observed in the issuance of licenses, prescribing forms or records to be kept of the sale of liquor by stores, prescribing notices required by this act or the regulations thereof, and the manner of giving and serving the same, prescribing, subject to the provisions of this act, the conditions and qualifications necessary to obtain a license, the books and records to be kept by the licensee, the form of returns to be made by them, and providing for the inspection of such licensed premises, specifying and describing the place and manner in which the liquor may be lawfully kept or stored, covering the conduct, management and equipment of premises licensed to sell liquor and make regulations respecting the sale and consumption of liquor in clubs, hotels and other places of business of licensees. [L. '37, Ch. 84, § 22. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.186. Licensees — investigation of — licenses — suspension — revocation — violations of act. The board may upon its own motion, and shall upon a written verified complaint of any other person, investigate the action and operation of any licensee hereunder, and shall have power to temporarily suspend and/or permanently revoke a license issued under this act for violation of the provisions of this act or any rule or regulation promulgated by the board. [L. '37, Ch. 84, § 23. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.187. Complaints against licensees — procedure — default — license — revocation or suspension. Upon the filing with the board of a verified complaint charging the licensee with the commission of any act which would be cause for the suspension or revocation of a license, within one year prior to the date of filing said complaint, the above said board shall forthwith issue a citation directing the licensee to appear before the said board within ten days after the date of the service of said citation and, by filing his verified answer to the complaint, show cause, if any, why his license should not be suspended or revoked. Service of the citation may be effected by mailing a true copy thereof with a true copy of the complaint by registered mail addressed to the licensee at his last

address of record or by the sheriff of the county in which the licensee resides. Failure of the licensee to answer shall be deemed an admission by him of the truthfulness of the charge made and thereupon the said board shall be authorized to forthwith suspend or revoke the license. [L. '37, Ch. 84, § 24. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.188. Complaint against licensees — hearing — decision by board — appeal to district court — trial — appeal bond. Upon the filing of the answer of [?] the board shall fix the time and place of the hearing on the charges made, which hearing shall be in the county where the licensee resides, and not less than five (5) days notice of said hearing shall be given to the complainant and licensee. The notice of hearing shall be served in the same manner as is the citation herein provided for. With the notice of the hearing to the complainant, there shall be attached a true copy of the answer of the licensee. If either party has appeared by counsel the notice shall be given in like manner to the counsel of said party. Upon the hearing the board shall hear the evidence presented, which may be in the form of oral testimony or affidavits, or both. After the hearing has been concluded the said board shall, within ten days, render its decision in writing, stating the reasons therefor. Notice of the decision, with copy thereof, shall be served upon the parties, or their counsel, in the manner herein provided as to other notices. When the board shall have revoked or cancelled a license previously issued by it, the board shall notify the licensee in writing by registered mail, to the address of such licensee, of its action, giving reasons thereof, and thereupon such licensee shall have the right to appeal to the district court of the county in which he shall reside, from the action of the board, by filing a notice of appeal with the clerk of the district court and paying the filing fee required to commence a suit or action in the district court, which appeal must be so taken within thirty (30) days after the order made and entered by the board. The trial shall be had before the district court upon the record presented to the board, and upon which its decision was rendered, and there shall not be any additional evidence introduced or anything in the nature of a trial de novo. Pending decision on appeal the licensee must file a good and sufficient bond in the sum of two thousand dollars (\$2,000.00), payable to the state of Montana, conditioned that he will pay all costs and be responsible for any and all

violations of the law on his premises, pending final disposition of the appeal. [L. '37, Ch. 84, § 25. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.189. Premises of licensee — inspection — railway cars — board or officer. The board or any duly authorized representative thereof, or the sheriff of any county, shall have the right at any time to make an examination of the premises of such licensee as to whether the law of Montana and the rules and regulations of the said board are being complied with, and shall also have a right to inspect cars of any railway system licensed under this act. [L. '37, Ch. 84 § 26. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.190. License — renewal of suspended — revocation. After suspension or revocation of a license the board shall have the power to renew the same if in its discretion a proper showing therefor has been made. [L. '37, Ch. 84, § 27. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.191. Cities and counties — may impose license — fee. The city council of any incorporated town or city, or the county commissioners outside of any incorporated town or city, may provide for the issuance of licenses to persons to whom a license has been issued under the provision of this act, and may fix license fees thereof, not to exceed a sum equal to fifty per cent (50%) of the license fee collected by the board from such licensee under this act. [L. '37, Ch. 84, § 28. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

2815.192. Moneys received—allocation. All receipts from license fees, fines and penalties collected under the provisions of this act shall be paid to the state treasurer and by him apportioned and allocated as follows: Fifty per cent (50%) to the state public school general fund and fifty per cent (50%) to the public welfare fund for the administration of the social security laws. [L. '37, Ch. 84, § 29. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.]

Note. See § 2343.1a.

1938. The appropriation for carrying on the work of the public welfare act was made by section 349A.80 and not by section 2815.192. State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

1938. The allocation to the state public school general fund under section 2815.192 is subject to the provisions of a general law for the disbursement of all money in that fund under section 1200 et seq. State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

1938. The liquor control act, section 2815.164 et seq. (Laws of 1937, Ch. 84) is not a law relating to appropriations of money within the purview of Art. 5, § 1 of the constitution in regard to referendums. State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

1938. The liquor control act, sections 2815.164 to 2815.204, was not passed in an effort to produce revenue to balance the budget, and was not an appropriation measure. State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937, holding that there is a very decided difference between an appropriation and an allocation.

1938. "The moneys collected under the act, when placed in the two funds, are only subject to disbursement by virtue of some other independent legislative direction." State ex rel. Haynes v. District Court, 106 Mont. 470, 78 P. (2d) 937.

2815.193. Issuance of licenses — suspension of act — local option — election. The provisions of this act as to the issuance of licenses as herein provided shall be effective thirty (30) days after the passage and approval of this act. In the event that during the said period of thirty (30) days, a duly verified petition in writing signed by not less than thirty-five per centum (35%) of the registered qualified electors of any county file with the board of county commissioners their protest against the issuance of any licenses as herein provided by the Montana liquor control board under the provisions of this act, then the said Montana liquor control board shall not issue any license or licenses within said county, except as herein provided.

The board of county commissioners must within five (5) days after the filing of said petition, meet and determine the sufficiency of the petition presented by ascertaining whether or not at least thirty-five per centum (35%) of the signers of said petition are registered electors of the territory or county affected. The board of county commissioners must within ten (10) days after the filing of such petition, if such petition be sufficient therefor make an order calling an election to be held within the county in the manner and at the places of holding an election for county offices in such county. Such election to be held on a day fixed by the board of county commissioners not more than thirty (30) days after the filing of such petition for the purpose of determining whether or not any license for

the sale of spirituous liquors may be sold within the limits of the county as provided by the provisions of this act. [L. '37, Ch. 84, § 30. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.194. Notice of election — publication. The notice of election must be published once a week for four (4) weeks in such newspapers in the county where the election is to be held as the board of county commissioners may think proper. [L. '37, Ch. 84, § 31. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.195. Ballots — form. The county clerk must furnish the ballots to be used at such election, as provided in the general election law, which ballots must contain the following words: "Sale of Alcoholic Beverages, Yes", "Sale of Alcoholic Beverages, No", and the elector in order to vote must mark an "X" opposite one of the answers. [L. '37, Ch. 84, § 32. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.196. Polling places. The polling places must be established, the judges and other officers to conduct the election must be designated, and the election must be held, canvassed and returned in all respects in conformity to the laws of the state. [L. '37, Ch. 84, § 33. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.197. Election — effect — sale — when local option vote is "no". If a majority of the votes cast are "Sale of Alcoholic Beverages, Yes", the provisions of this act shall take effect immediately. If a majority of the votes cast are "Sale of Alcoholic Beverages, No", the board of county commissioners must publish the result once a week for four (4) successive weeks in the paper in which the notice of election was given, and at the expiration of the time of the publication of such notice all existing licenses shall be cancelled and it shall thereupon be unlawful to sell, either directly or indirectly, any liquor in such county under penalty of a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding six (6) months, or by both such fine and imprisonment; provided, however, that nothing herein contained shall

be construed to prevent or prohibit the sale of liquor at or by a state liquor store under the liquor control act. [L. '37, Ch. 84, § 34. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.198. Election — contest. Any election held under the provisions of the act may be contested in the same manner as provided by the general election laws. [L. '37, Ch. 84, § 35. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.199. Local option election — second election. If no petition protesting against the issuance of licenses as herein provided be filed with the board of county commissioners within thirty (30) days after the passage and approval of this act, or if a majority of the votes cast at any election held in pursuance of the filing of said petition as herein provided, are "Sale of Alcoholic Beverages, No", then there shall not be submitted to the qualified electors of said county any other or further question as to the sale of alcoholic beverages within said county for a period of two (2) years from and after the date of the filing of said petition protesting the issuance of said license as herein provided with the board of county commissioners. [L. '37, Ch. 84, § 36. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.200. Business operated in name of licensee only — United States permits — necessity. No business shall be carried on under any license issued under this act except in the name of the licensee. No license shall be effective until a permit shall have been first secured under the laws of the United States if such a permit is necessary or is required under such law. [L. '37, Ch. 84, § 37. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.201. Violation of act — penalty — license — revocation. Any person violating any of the provisions of this act, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided by law, except as is herein otherwise provided. If any such licensee is convicted of any offense under this act his license shall be immediately

revoked. [L. '37, Ch. 84, § 38. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.202. Partial invalidity saving clause—application of act. If any clause, sentence, paragraph, section or any part of this act shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act. This act shall apply to the Montana liquor control board as now composed and existing, and to any board or commission which may hereafter succeed the above said board. [L. '39, Ch. 84, § 39. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.203. Repeals of conflicting laws. All acts and parts of acts in conflict hereto are hereby repealed, but this act shall not be construed to repeal or amend any provision or section of the state liquor control act of Montana, except in so far as the same is in conflict with this act. [L. '37, Ch. 84, § 40. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

2815.204. Effective date of act. This act, except as herein otherwise specifically provided, shall be in full force and effect from and after its passage and approval. [L. '37, Ch. 84, § 41. Approved March 5, 1937. Adopted by referendum vote of the people November 8, 1938; effective by governor's proclamation January 21, 1939. See L. '39, page 731, et seq.

CHAPTER 255A

STATE TEMPERANCE COMMISSION

Section

- 2815.205. State temperance commission — establishment—personnel.
- 2815.206. President—place of business.
- 2815.207. Secretary—salary.
- 2815.208. Purpose of commission.
- 2815.209. Administration of act—duty of commission —sale of liquor to minors—prevention —public policy.
- 2815.210. Attorneys — state and county — peace officers — cooperation — law violations — investigation.
- 2815.211. Temperance commission fund—creation.
- 2815.212. Administration of fund—application and use.
- 2815.213. Appropriation—amount—payment back to state treasury—when.

2815.205. State temperance commission — establishment — personnel. That there shall be established in the state of Montana, a commission to be known as the state temperance commission, the same to be composed of the secretary of the bureau of child and animal protection, the superintendent of public instruction, and the secretary of the state board of health, all of whom shall serve ex-officio as members of such commission without additional compensation. [L. '37, Ch. 201, § 1. Approved and in effect March 18, 1937.

2815.206. President—place of business. The secretary of the bureau of child and animal protection shall be the president of such commission, and its principal place of business shall be at the capitol building, in the city of Helena, Montana. [L. '37, Ch. 201, § 2. Approved and in effect March 18, 1937.

2815.207. Secretary — salary. The said commission shall be authorized, and is hereby empowered, to appoint and employ a secretary, who shall hold office at the pleasure of the board, and receive a salary of \$1,800.00 a year, to be paid from the fund hereinafter provided. [L. '37, Ch. 201, § 3. Approved and in effect March 18, 1937.

2815.208. Purpose of commission. It is hereby declared to be the purpose of the establishment of such commission, to prevent the intemperate use of alcoholic beverages in the state of Montana, and to disseminate information by newspaper advertising, by the distribution of literature, radio speeches, and lectures calculated to bring about temperance in the use of alcoholic liquors by the people of the state of Montana, and particularly intended to educate the minor children of the state with respect to the evils incident to the use of alcoholic stimulants, and the injury occasioned to the body and mind of individuals, and to society, incident to intemperance. [L. '37, Ch. 201, § 4. Approved and in effect March 18, 1937.

2815.209. Administration of act — duty of commission — sale of liquor to minors — prevention — public policy. In the administration of this act, it is made the duty of the said commission to make such efforts and endeavor as may appear best calculated to prevent the sale of alcoholic liquors or alcoholic beverages to minors in violation of the law, and to prevent the use thereof by minors; it being hereby declared to be the public policy of this state that the use of alcoholic liquors by minors is injurious to both body and mind and detrimental to society, and that effective efforts should be made to enforce the law prohibiting the sale,

or gift, of alcoholic liquors to minors. [L. '37, Ch. 201, § 5. Approved and in effect March 18, 1937.

2815.210. Attorneys — state and county — peace officers — cooperation — law violations — investigation. Upon said temperance commission is conferred the power and it is made its duty to co-operate with and assist the attorney general, all county attorneys, sheriffs and peace officers in the rigid enforcement of all laws prohibiting the sale of liquor to minors and the punishment of offenders. It is vested with power and authority to make independent investigations of such law violations and to prefer charges in any court having jurisdiction against persons accused of violating the law, and it is hereby made the duty of county attorneys to prosecute all such charges by it preferred. [L. '37, Ch. 201, § 6. Approved and in effect March 18, 1937.

2815.211. Temperance commission fund — creation. For efficiently carrying out the purpose of this act and enabling the said commission to administer the law in the interest of society, upon the liquor traffic is imposed the burden; and, therefore, there shall be, and is, hereby created a special state fund to be known and designated as the "temperance commission fund", the same to be derived wholly and exclusively by the setting aside from year to year of one per cent of the net profits obtained by the state of Montana in the sale of alcoholic liquors through the state liquor stores to an amount not to exceed five thousand dollars (\$5,000.00) in any one year, which fund shall be kept and held in the state treasury and be devoted exclusively for the purpose of administering this act, which must be computed by the state liquor control board and by it paid to the state treasurer on the 31st day of December of each year. [L. '37, Ch. 201, § 7. Approved and in effect March 18, 1937.

2815.212. Administration of fund — application and use. Such fund shall be kept and carried on the books of the state treasurer of the state of Montana under the designation of "temperance commission fund", and all claims incurred by the commission or through its authority in the administration of this act, shall be paid solely and exclusively from such fund upon claims duly presented and approved by the state board of examiners. [L. '37, Ch. 201, § 8. Approved and in effect March 18, 1937.

2815.213. Appropriation — amount — payment back to state treasury — when. That there shall be and is hereby appropriated from moneys in the state treasury to the

credit of the general fund, not otherwise appropriated, the sum of five thousand dollars in order to meet the expenses of the commission in organization and the administration of this act before funds are available in the state treasury to the credit of the "temperance commission fund"; and the said commission is hereby directed and required to pay back to the state treasury for credit of the general fund the amount of such appropriation so soon as funds in the state treasury to the credit of the "temperance commission fund" have accumulated in sufficient amount to permit without crippling the said commission in the administration of this act. [L. '37, Ch. 201, § 9. Approved and in effect March 18, 1937.

Section 10 repeals conflicting laws.

CHAPTER 256

WORKMEN'S COMPENSATION ACT

Section

- 2835. Attorney general legal adviser of board—other counsel — employment — compensation — source.
- 2841. Employers engaged in hazardous industries—election—re-election.
- 2843. Repealed.
- 2891. Compensation to children, brothers and sisters, and invalid children—when ceases—orphans—defined—marriage of dependents.
- 2900. Exception in case of minors and incompetents as to period of limitation and in case of workmen employed by school districts as to the time when the period of limitations shall begin to run.
- 2945. Apportionment of costs and disbursements.
- 2952. Jurisdiction to rescind or amend any order, decision, award, etc.—limitations—amended order—effect.
- 2953. Record of proceedings to be kept and testimony to be taken down—attorneys fees—record on review—what constitutes.

2816. Name of act—what each part to contain.

- ✓1939. Railroad owned a pumping house. Plaintiff as employee of corporation performing services for the railroad was injured while working in pumping house by stepping in hole and falling into machinery. Plaintiff accepted workmen's compensation under the statute from his employer and sued the railroad company as a third party tortfeasor. Held that the injury was connected with his regular employment and that he could not recover from the railroad. *Sullivan v. Northern Pacific Ry. Co.*, 104 Fed. (2d) 517.
- ✓1938. Defendant owned pumping house. Plaintiff as employee of corporation performing services for the railroad was injured while working in pumping house by stepping in hole and falling into machinery. Plaintiff accepted workmen's compensation under the statute from his employer and sued the railroad company as third party tortfeasor. Held, that the injury was connected with his regular employment and that he could not recover from the railroad. *Sullivan v. Northern Pac. Ry. Co.*, 24 Fed Supp. 822.

1938. ✓ Section 2816 et seq. cited in *Koppang v. Sevier*, 106 Mont. 79, 75 P. (2d) 790, an action against a third party alleged to have caused the death of an employee, where the plaintiff's attorney stated to the jury that in case of recovery by the plaintiff, half of the amount recovered would have to be paid to the compensation board, which had already made an award to the plaintiff's beneficiaries for the death of the employee, which statement was held not reversible error as referring to the fact of deceased's being insured, where there was no assignment that the verdict was excessive.

1937. ✓ The workmen's compensation act does not furnish a proper "yardstick" to measure the damages an injured employee may recover in an action against an employer who has not come under the act. *Chancellor v. Hines Motor Supply Co.*, 104 Mont. 603, 69 P. (2d) 764.

1936. ✓ The deposit of an insurance policy by an employer with the board was notice to it that such employer or one of a similar name was desirous of enrolling under the act. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

1936. ✓ Where an employer has sold his business the act imposes the duty upon the board to determine whether the succeeding proprietor has properly enrolled under the act, and, if not, to see that the notices in the place of business are removed in order that employees be not misled as to their protection. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

1936. ✓ A variation in the name of the employer from the true name, in enrollment under the act, will not prevent recovery of an employee for an injury where the identity of the employer and place of business are not uncertain. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

1936. ✓ This act is not founded on the theory of life insurance, nor is it a social insurance law. *Sullivan v. Roman Catholic Bishop of Helena et al.*, 103 Mont. 117, 61 P. (2d) 838.

1936. ✓ A contract entered into by an employer with a hospital for the care and medical attention of employees by virtue of the compensation act, and in conformity with the provisions thereof, held to have embodied such provisions and was to be construed in the light of the true intent and purpose of the act. *Sample v. Murray Hospital*, 103 Mont. 195, 62 P. (2d) 241.

1936. ✓ Where employer was enrolled and successor filed insurance policy with board it was estopped to deny the successor was under act, and thus defeat award to employee. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

1936. ✓ The compensation act does not afford a new method of atonement for injury inflicted, but merely requires industry to relieve society of the care of manpower wrecked in the industry. *Chisholm v. Vocational School for Girls*, 103 Mont. 503, 64 P. (2d) 838.

1936. ✓ The right of an employee to compensation under the compensation law is based on the employer-employee relation which is purely economic in character as distinguished from the creation of a new right in the employee sounding in tort. The new obligation of the employer to his employee is rather a wage obligation in the nature of an undertaking thrust upon the employer, as a part of the contract of employment, to become a party to an insurance policy created by law and to be entered into as an additional consideration for services rendered by the employee. *Chisholm v. Vocational School for Girls*, 103 Mont. 503, 64 P. (2d) 838.

2818. "Compensation provisions."

1935. ✓ Claimant for compensation under the workmen's compensation act held not entitled to reasonable expense of examination and report of physician as to claimant's physical condition as costs, since costs are entirely statutory and there is no provision for an allowance of this nature. *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

2819. Industrial accident board—compensation—term and salary.

1936. ✓ The industrial accident board is a ministerial and administrative body, but, in order to discharge its functions, it has quasi judicial powers. *State ex rel. Magelo v. Industrial Accident Board*, 102 Mont. 455, 59 P. (2d) 785.

1936. ✓ On mandamus to compel the payment of an award, as directed by the supreme court on a prior appeal, the supreme court could not direct the payment of interest where the record did not show that pleadings contained claim therefor, as the act makes no specific provision for interest. *State ex rel. Miller v. Industrial Accident Board*, 102 Mont. 206, 56 P. (2d) 1087.

1936. ✓ The functions to be performed by the board in compliance with a mandate on remittur of the supreme court held purely ministerial, and not quasi-judicial, where the board was directed to enter an award, in a proper case, despite the fact that the employer had neither enrolled with the board nor filed an insurance policy. *State ex rel. Miller v. Industrial Accident Board*, 102 Mont. 206, 56 P. (2d) 1087.

2836. Defenses excluded in personal injury action—negligence of employee—fellow-servant—assumption of risk.

1937. ✓ Wilful contributory negligence which will bar an employee from recovery in action under the workmen's compensation law is self-determined, voluntary, intentional negligence. *Chancellor v. Hines Motor Supply Co.*, 104 Mont. 603, 69 P. (2d) 764.

1937. ✓ An employee suing an employer who has not come under the compensation law must, in order to recover, prove the injury sustained by the employee was due to the negligence of the employer, even though the employer cannot avail himself of the common-law defenses of contributory negligence of the employee, fellow-servant rule, or assumed risk. *Chancellor v. Hines Motor Supply Co.*, 104 Mont. 603, 69 P. (2d) 764.

1937. ✓ Where a lathe operator sued his employer, who had not come under the workmen's compensation law, for injuries sustained when his clothes caught in a brake drum, the negligence of the employer was held the proximate cause of the injury. *Chancellor v. Hines Motor Supply Co.*, 104 Mont. 603, 69 P. (2d) 764.

2838. Employers not liable for death or injury other than herein defined—employees who elect not to come under law.

1937. ✓ Wilful contributory negligence which will bar an employee from recovery in action under the workmen's compensation law is self-determined, voluntary, intentional negligence. *Chancellor v. Hines Motor Supply Co.*, 104 Mont. 603, 69 P. (2d) 764.

1937. ✓ An employee suing an employer who has not come under the compensation law must, in order to recover, prove the injury sustained by the employee

was due to the negligence of the employer, even though the employer cannot avail himself of the common-law defenses of contributory negligence of the employee, fellow-servant rule, or assumed risk. *Chancellor v. Hines Motor Supply Co.*, 104 Mont. 603, 69 P. (2d) 764.

1937. Where a lathe operator sued his employer, who had not come under the workmen's compensation law, for injuries sustained when his clothes caught in a brake drum, the negligence of the employer was held the proximate cause of the injury. *Chancellor v. Hines Motor Supply Co.*, 104 Mont. 603, 69 P. (2d) 764.

2839. Election of employer and employee to come under act—action against third party causing injury.

1939. ✓ Railroad owned a pumping house. Plaintiff as employee of corporation performing services for the railroad was injured while working in pumping house by stepping in hole and falling into machinery. Plaintiff accepted workmen's compensation under the statute from his employer and sued the railroad company as a third party tortfeasor. Held that the injury was connected with his regular employment and that he could not recover from the railroad. *Sullivan v. Northern Pacific Ry. Co.*, 104 Fed. (2d) 517.

1938. ✓ Defendant owned pumping house. Plaintiff as employee of corporation performing services for the railroad was injured while working in pumping house by stepping in hole and falling into machinery. Plaintiff accepted workmen's compensation under the statute from his employer and sued the railroad company as third party tortfeasor. Held, that the injury was connected with his regular employment and that he could not recover from the railroad. *Sullivan v. Northern Pac. Ry. Co.*, 24 Fed Supp. 822.

1936. ✓ Whether an injured employee may sue a third person causing the injury and also recover compensation therefor depends on the law existing at the time of the injury. *Chisholm v. Vocational School for Girls*, 103 Mont. 503, 64 P. (2d) 838, holding such matter of double compensation is a matter of legislative control.

1936. ✓ Receipt by injured employee of a voluntary payment by a third party causing the injury held not to bar claim for compensation under the compensation act. *Chisholm v. Vocational School for Girls*, 103 Mont. 503, 64 P. (2d) 838.

1936. ✓ The workmen's compensation act must be read as a whole, and every provision and part thereof given proper and harmonious consideration. *Koppang v. Sevier*, 101 Mont. 234, 53 P. (2d) 455.

1936. ✓ Where highway flagman was killed by motorist who was not subject to compensation act, acceptance of compensation under act did not bar action against motorist. *Koppang v. Sevier*, 101 Mont. 234, 53 P. (2d) 455.

1936. ✓ Words and phrases in act amendatory of workmen's compensation act must be understood in the light of the full context of the chapter and construed in accordance with statutory rules; they must be taken to mean something practical, reasonable, and consonant with the declared intention of the legislative body. *Koppang v. Sevier*, 101 Mont. 234, 53 P. (2d) 455.

2835. Attorney general legal adviser of board — other counsel — employment — compensation — source. The attorney general shall be the legal adviser of the board, and

shall represent it in all proceedings whenever so requested by the board or any member thereof.

And it is further provided that the board may, in the investigation and defense of cases under plan three of the workmen's compensation act, employ such other attorney or legal adviser, as it deems necessary, and pay for the same out of the industrial accident fund. [L. '37, Ch. 162, § 1, amending R. C. M. 1935, § 2835. Approved and in effect March 16, 1937.

Section 4 repeals conflicting laws.

2841. Employers engaged in hazardous industries — election — re-election. Every employer engaged in the industries, works, occupations, or employments in this act specified as "hazardous", shall, on or before the first day of July, 1939, if such employer be then engaged in such hazardous industry, work, occupation, or employment, or at any time thereafter, or, if such employer be not so engaged on said date, shall, on or after thirty days before entering upon such hazardous work, occupation, or employment, or at any time thereafter, elect whether he will be bound by either of the compensation plans mentioned in this act. Such election shall be in the form prescribed by the board, and shall state whether such employer shall be bound by compensation plan number one, or compensation plan number two, or compensation plan number three, and a notice of such election, with the nature thereof shall be posted in a conspicuous place in the place of business of such employer, and a copy of such notice, together with an affidavit of such posting, shall be filed with the board.

After having once elected to be bound by one or the other of the compensation plans provided in this act, such employer shall be bound by such election, except as hereinafter provided, for said first fiscal year and each succeeding fiscal year, provided, however, that such employer may at any time upon thirty days written notice to the insurer or the board, as the case may be, elect to be bound by a different compensation plan than the one by which he is then governed. Such election must be made in the manner provided for in reference to the first election of such employer under this act. [L. '39, Ch. 119, § 1, amending R. C. M. 1935, § 2841. Approved March 3, 1939; effect July 1, 1939.

Section 3 repeals conflicting laws.

2843. Repealed. [L. '39, Ch. 119, § 2. Approved March 3, 1939; in effect July 1, 1939.

2843. Failure to elect—time for which election binds employer.

1937. In an action against an employer who had not elected to come under the act it was held that an instruction using the word "failed" instead of "elect" in reference coming under the act was not objectionable as implying a failure to obey the law. *Chancellor v. Hines Motor Supply Co.*, 104 Mont. 603, 69 P. (2d) 764.

1936. The deposit of an insurance policy by an employer with the board was notice to it that such employer or one of a similar name was desirous of enrolling under the act. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

1936. Where an employer has sold his business the act imposes the duty upon the board to determine whether the succeeding proprietor has properly enrolled under the act, and, if not, to see that the notices in the place of business are removed in order that employees be not misled as to their protection. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

1936. A variation in the name of the employer from the true name, in enrollment under the act, will not prevent recovery of an employee for an injury where the identity of the employer and place of business are not uncertain. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

2862. Employer defined.

1936. A variation in the name of the employer from the true name, in enrollment under the act, will not prevent recovery of an employee for an injury where the identity of the employer and place of business are not uncertain. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

2866. "Major dependent" defined.

1938. In determining the question of dependency it is not material that the employee's contributions were made at irregular intervals or that they varied in amount or were made in pursuance of a promise to support, but whether the dependent relied upon their continuance in the future with reasonable expectation that they would be continued. *Ross v. Industrial Accident Board*, 106 Mont. 486, 80 P. (2d) 362.

1938. A statement by an employee, since deceased, that he intended to send his pay checks to his parents, held admissible as part of the res gestae on the question of major dependents. *Ross v. Industrial Accident Board*, 106 Mont. 486, 80 P. (2d) 362.

1938. The need of the parents is more important than the extent of the employee's contribution to their support in determining the question of their dependency. *Ross v. Industrial Accident Board*, 106 Mont. 486, 80 P. (2d) 362.

1938. Evidence held sufficient to warrant a finding that parents were major dependents. *Ross v. Industrial Accident Board*, 106 Mont. 486, 80 P. (2d) 362.

2870. "Injury" or "injured" defined.

1938. Neurosis resulting from an injury in an industrial accident is compensable. *O'Neil v. Industrial Accident Fund*, 107 Mont. 176, 81 P. (2d) 688.

1935. Neurosis resulting from injury received in an industrial accident is compensable under the workmen's compensation act. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. Where pre-existent disease is inflamed and made active by injury, compensation is allowed under act. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

2891. Compensation to children, brothers and sisters, and invalid children—when ceases—orphans—defined—marriage of dependents. In computing compensation to children and to brothers and sisters, only those under eighteen (18) years of age, except as hereinafter provided, shall be included.

Orphan children or orphan brothers and sisters, under the age of twenty-one (21) years, and invalid children over the age of twenty-one (21) years shall also be included, and in case of invalid children, only during the period during which they are under that disability, all within the maximum limitations elsewhere in this act provided, after which payments on account of such person or persons shall cease.

Compensation to children, or brothers and sisters, except orphans and invalid children, shall cease when such persons reach the age of eighteen (18) years, and in all cases shall cease when such person marries; provided that for the purpose of determining the amount of compensation due to injured employees, as provided in sections 2912, 2913, 2914 and 2920 of the revised codes of Montana of 1935, no child or children, or brother or sister over the age of eighteen (18) years, except invalid children, shall be considered. An orphan as defined herein shall mean a child who is bereaved of both parents. [L. '37, Ch. 53, § 1, amending R. C. M. 1935, § 2891. Approved and in effect February 24, 1937.]

Section 2 repeals conflicting laws.

2899. Claims must be presented within what time.

1936. Verification of answers and replies is not necessary to give jurisdiction to the court, and, as verification is not part of a pleading, its absence is waived by failure to object to the defect; also the defect may be cured by amendment of a pleading on file. *Chisholm v. Vocational School for Girls*, 103 Mont. 503, 64 P. (2d) 838, applying the rules to a claim for compensation under the workmen's compensation act.

1936. Where the terms of the statute are plain, unambiguous, direct, and certain, the statute speaks for itself and there is nothing to construe. *Chisholm v. Vocational School for Girls*, 103 Mont. 503, 64 P. (2d) 838.

1936. The time when a claim must be filed under this act is governed by the law in force at the time the claimant was required to file his claim, and not the time prescribed in a later amendment of the law. *Chisholm v. Vocational School for Girls*, 103 Mont. 503, 64 P. (2d) 838.

1936. Where claim was filed in time and returned by the employer for verification, a refile after the time limit did not justify the court in dismissal of the claim because not filed in time fixed by the statute. *Chisholm v. Vocational School for Girls*, 103 Mont. 503, 64 P. (2d) 838.

2900. Exception in case of minors and incompetents as to period of limitation and in

case of workmen employed by school districts as to the time when the period of limitations shall begin to run. No limitation of time as provided in section 2899 or in chapter 256 of the political code of the state of Montana, revised codes, 1935, known as workmen's compensation act, shall run as against any injured workman who is mentally incompetent and without a guardian, or an injured minor under eighteen years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction in which event the period of limitations as provided for in section 2899, revised codes of Montana, 1935, shall begin to run on the date of appointment of such guardian, or when such minor arrives at the age of eighteen years, whichever date may be the earlier. The period of limitations as provided for in section 2899, revised codes of Montana, 1935, and any limitation of time for the filing of claims with the industrial accident board contained in chapter 256 of the political code of the state of Montana, revised codes, 1935, known as workmen's compensation act, shall not begin to run against any injured workman employed by any school district in the state of Montana until January 1, 1939. [L. '39, Ch. 79, § 1, amending R. C. M. 1935, § 2900. Approved and in effect March 1, 1939.]

Section 2 repeals conflicting laws.

2907. Contracts or agreements for hospital benefits, conditions governing.

1936. ✓ In action by widow of employee against hospital which had made contract with the employer, under the provisions of the compensation act, to care for employees, for refusal to care for employee, it was error for the court to submit to the jury the question whether such refusal was in violation of the contract, since that was a question of law. *Sample v. Murray Hospital*, 103 Mont. 195, 62 P. (2d) 241, holding defendant's objections to such submission were sufficient to call the court's attention to the error, and refusing to remand the case with directions to dismiss the action since the question of law was one made so by statute and imposed on the trial the duty to try out the case on the evidence, which he was in a better position to do than the supreme court.

1936. A contract entered into by an employer with a hospital for the care and medical attention of employees by virtue of the compensation act, and in conformity with the provisions thereof, held to have embodied such provisions and was to be construed in the light of the true intent and purpose of the act. *Sample v. Murray Hospital*, 103 Mont. 195, 62 P. (2d) 241.

2910. Questions of law in certain actions.

1936. ✓ In action by widow of employee against hospital which had made contract with the employer, under the provisions of the compensation act, to care for employees, for refusal to care for employee, it was error for the court to submit to the jury the question whether such refusal was in violation of

the contract, since that was a question of law. *Sample v. Murray Hospital*, 103 Mont. 195, 62 P. (2d) 241, holding defendant's objections to such submission were sufficient to call the court's attention to the error, and refusing to remand the case with directions to dismiss the action since the question of law was one made so by statute and imposed on the trial the duty to try out the case on the evidence, which he was in a better position to do than the supreme court.

2911. Who liable for injuries under the different plans of act, and in what amounts.

1936. ✓ Injuries to a matron of the state vocational schools for girls, suffered while driving her automobile in the course of her employment as result of a collision with a truck, due to the negligent operation thereof, held compensable under the workmen's compensation act. *Chisholm v. Vocational School for Girls*, 103 Mont. 503, 64 P. (2d) 838.

1936. ✓ Whether an employee killed by lightning was compensable as an accident arising out of and in the course of his employment held a question of law for the supreme court on appeal. *Sullivan v. Roman Catholic Bishop of Helena et al.*, 103 Mont. 117, 61 P. (2d) 838.

1936. ✓ The claimant for compensation for death of employee has the burden of proving by a preponderance of the evidence that the death resulted from an accidental injury arising out of and in the course of the employment. *Doty v. Industrial Accident Fund*, 102 Mont. 511, 59 P. (2d) 782.

1936. ✓ Evidence held to sustain decision of the industrial accident board that an accident did not cause pneumonia, which resulted in the death of an employee, or aggravate a condition which would cause pneumonia. *Doty v. Industrial Accident Fund*, 102 Mont. 511, 59 P. (2d) 782.

1936. ✓ Death of employee by lightning stroke while working in cemetery with an iron bar in his hand, where other workmen near by were uninjured, held compensable under the act. *Sullivan v. Roman Catholic Bishop of Helena et al.*, 103 Mont. 117, 61 P. (2d) 838.

1935. ✓ Where workman employed on very hot oil-surfaced highway suffered heat prostration and died 11 days later his death was compensable under this act, since he was subject to greater risk when so employed than other in the community. *Ryan v. Industrial Accident Fund*, 100 Mont. 143, 45 P. (2d) 775.

2912. Compensation for injury producing temporary total disability.

1938. ✓ Where the board awarded a claimant compensation at the rate of \$16.50 a week for 78 weeks for total disability, but there was no finding whether it was permanent or temporary, the clear inference was that it regarded the disability not to be permanent. *Kelly v. West Coast Construction Co.*, 106 Mont. 463, 78 P. (2d) 1078.

1935. ✓ A finding of the court that the claimant suffered partial disability, and an allowance, in the same order, of maximum weekly compensation for a lesser number of weeks than the maximum for total disability were inconsistent and required a reversal of the award and remand for further proceedings. *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

1935. ✓ Aside from the loss of members of the body, the extent of a man's disability is determined by answering the question as to whether or not he is able to earn wages by labor, and, if so, how his

earning capacity compares with that before the injury. If he is still able to earn something as wages, his disability is partial; if not, it is total. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82. See, also, *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

2913. Compensation for injury producing total disability permanent in character.

1938. ✓ Where the board awarded a claimant compensation at the rate of \$16.50 a week for 78 weeks for total disability, but there was no finding whether it was permanent or temporary, the clear inference was that it regarded the disability not to be permanent. *Kelly v. West Coast Construction Co.*, 106 Mont. 463, 78 P. (2d) 1078.

1936. ✓ Where the facts established the right of the employee to award under this section, the board, on remittur from the supreme court with directions to enter the award, should have done so without granting rehearing at insistence of insurance carrier. *State ex rel. Miller v. Industrial Accident Board*, 102 Mont. 206, 56 P. (2d) 1087.

1935. ✓ A finding of the court that the claimant suffered partial disability, and an allowance, in the same order, of maximum weekly compensation for a lesser number of weeks than the maximum for total disability were inconsistent and required a reversal of the award and remand for further proceedings. *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

1935. ✓ Where it is found that the employee is permanently and totally disabled so far as hard work or manual labor is concerned, but that he might do light work of a special nature not generally available, the burden is on the employer to show that such special work is available to the employee. *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

1935. ✓ Where board found that the claimant could earn no wages his disability should have been classed as total permanent, and he was entitled to weekly payments "during the period of disability," but not for longer than 500 weeks from and after the date of the injury. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82. See, also, *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

1935. ✓ Aside from the loss of members of the body, the extent of a man's disability is determined by answering the question as to whether or not he is able to earn wages by labor, and, if so, how his earning capacity compares with that before the injury. If he is still able to earn something as wages, his disability is partial; if not, it is total. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82. See, also, *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

2914. For partial disability—for an injury producing partial disability.

1935. ✓ Evidence held insufficient to justify a belief that compensation could be reduced because of the possibility that claimant could obtain and perform some less remunerative light work. *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

1935. ✓ Where it is found that the employee is permanently and totally disabled so far as hard work or manual labor is concerned, but that he might do light work of a special nature not generally available, the burden is on the employer to show that such special work is available to the employee. *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

1935. ✓ A finding of the court that the claimant suffered partial disability, and an allowance, in the same order, of maximum weekly compensation for a lesser number of weeks than the maximum for total disability were inconsistent and required a reversal of the award and remand for further proceedings. *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

1935. ✓ Aside from the loss of members of the body, the extent of a man's disability is determined by answering the question as to whether or not he is able to earn wages by labor, and, if so, how his earning capacity compares with that before the injury. If he is still able to earn something as wages, his disability is partial; if not, it is total. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82. See, also, *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

2916. Providing for additional compensation in case death occurs while employee is drawing or entitled to draw compensation payment.

1936. ✓ The first duty of the board is to administer the act so as to give the employee the greatest possible protection consistent with the purposes of the act. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

2917. Medical and hospital services and such other treatment as approved by the board, to be furnished.

1935. ✓ Under this statute a physician cannot have an award for medical services rendered an injured employee, even on the written request of the employer to furnish them; his remedy is by court action. *Liest v. United States Fidelity & Guaranty Co.*, 100 Mont. 152, 48 P. (2d) 772.

2920. Compensation in case of specified injuries.

1937. ✓ In determining the amount of an award of compensation under the workmen's compensation act, the element of pain and suffering has no place; the relation imposed by the law is purely economic in character. *Chancellor v. Hines Motor Supply Co.*, 104 Mont. 603, 69 P. (2d) 764.

1936. ✓ In determining the amount of compensation, pain and suffering has no place under the workmen's compensation act. *Chisholm v. Vocational School for Girls*, 103 Mont. 503, 64 P. (2d) 838.

2924. Compensation in case of changes in degree of injury.

1935. ✓ A provision in an order attempting to make an award of additional compensation a full and final settlement was held unauthorized and ineffectual to prevent the board from acting upon a later application for additional compensation within the maximum allowed by the statute, as the board could not thus divest itself of the continued jurisdiction vested in it by the act. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ A petition for new hearing cannot be granted on ground that proof did not support order on original hearing or that order was unreasonable, where petition was filed more than two years after compensation had been paid in full. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 485.

1935. ✓ Sections 2924, 2952, and 2956, being in pari materia, must be construed together, and show a

clear legislative intent that no case in which compensation has been awarded shall be finally closed until the maximum period of payments for the disability for which such award has been made has expired, except that, under the amendment of 1929 to section 2952, this power is withdrawn with respect to "any final settlement" after the expiration of two years from the date the order awarding compensation is made, and in cases involving a compromise settlement. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

2926. Monthly payments converted into a lump sum.

1935. A petition for new hearing cannot be granted on ground that proof did not support order on original hearing or that order was unreasonable, where petition was filed more than two years after compensation had been paid in full. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

1935. Approval of board to settlement by employer in full held valid though made after such settlement, release in full by employee, and his return to work. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

2933. Notice of claims for injuries other than death.

1936. Mere knowledge on the part of an employer that an employee became sick while at work will not, in the absence of some knowledge on the part of the employer that some accidental injury was sustained by the employee, amount to actual knowledge of an injury. *State ex rel. Magelo v. Industrial Accident Board*, 102 Mont. 455, 59 P. (2d) 785.

1936. Notice of injury, signed by a doctor to whom an injured applied for treatment, stating merely that "Charles Magelo was sick and unable to work from January 17th to February 9th, 1930," held insufficient. *State ex rel. Magelo v. Industrial Accident Board*, 102 Mont. 455, 59 P. (2d) 785.

1936. An employee held not entitled to mandamus the industrial board to grant rehearing to decide whether a certain order and decision had ever been served on the petitioner where the supreme court had, on the whole record in a previous proceeding, decided that sufficient service had been made as required by law. *Magelo v. Industrial Accident Board*, 103 Mont. 477, 64 P. (2d) 113.

2938. Hearing and investigations—technical rules.

1938. A statement by an employee, since deceased, that he intended to send his pay checks to his parents held admissible as part of the res gestae on the question of major dependents. *Ross v. Industrial Accident Board*, 106 Mont. 486, 80 P. (2d) 362.

1938. Hearsay may be accepted or rejected in the discretion of the board. *Ross v. Industrial Accident Board*, 106 Mont. 486, 80 P. (2d) 362.

1938. The board is not obliged to accept testimony because it is not contradicted by other witnesses and it has the right to disregard evidence if it is improbable or incredible, but it cannot disregard uncontroverted credible evidence. *Ross v. Industrial Accident Board*, 106 Mont. 486, 80 P. (2d) 362.

1936. The functions to be performed by the board in compliance with a mandate on remittur of the supreme court held purely ministerial, and not quasi-judicial, where the board was directed to enter an award, in a proper case, despite the fact that the employer had neither enrolled with the board nor

filed an insurance policy. *State ex rel. Miller v. Industrial Accident Board*, 102 Mont. 206, 56 P. (2d) 1087.

1936. Where the facts established the right of the employee to award under this section, the board, on remittur from the supreme court with directions to enter the award, should have done so without granting rehearing at instance of insurance carrier. *State ex rel. Miller v. Industrial Accident Board*, 102 Mont. 206, 56 P. (2d) 1087.

1936. On appeal to the supreme court it was held that the court, not being advised as to the rules of practice of the industrial accident board, could not assume that a proper service of the board's decision had not been made on the claimant for compensation. *State ex rel. Magelo v. Industrial Accident Board*, 102 Mont. 455, 59 P. (2d) 785.

1936. Where petition for rehearing was filed three years after service upon claimant's attorney of decision of board denying compensation, but not on claimant, where service within 20 days was required, the board had no jurisdiction to hear the petition. *State ex rel. Magelo v. Industrial Accident Board*, 102 Mont. 455, 59 P. (2d) 785.

1936. The supreme court will not take judicial notice of the provisions of the rules of practice before the compensation board. *State ex rel. Magelo v. Industrial Accident Board*, 102 Mont. 455, 59 P. (2d) 785.

1936. The compensation act contains no provisions as to the method and manner of service of papers and notices, and the making of such rules would be an appropriate subject for the board to act on under the authority of this section. *State ex rel. Magelo v. Industrial Accident Board*, 102 Mont. 455, 59 P. (2d) 785, stating that the board might by rule provide for the service of notices by mail and that service upon attorneys for claimants would be service upon claimants.

1936. Board's service of decision on claimant's attorney by mail, instead of on claimant, held, at most, informal, and the supreme court could not say that it was insufficient, in view of the appropriate statutory provisions, especially where the claimant knew of such service. *State ex rel. Magelo v. Industrial Accident Board*, 102 Mont. 455, 59 P. (2d) 785.

1935. Defendant's objection that the trial in the district court was de novo and in disregard of the decision of the board, held untenable in view of the facts and judgment recitals. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

2939. Depositions may be taken.

1935. The compensation act contemplates the taking of depositions in the manner prescribed by law. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

2940. Powers of board.

1936. The first duty of the board is to administer the act so as to give the employee the greatest possible protection consistent with the purposes of the act. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

1936. Where an employer has sold his business the act imposes the duty upon the board to determine whether the succeeding proprietor has properly enrolled under the act, and, if not, to see that the notices in the place of business are removed in order that employees be not misled as to their protection. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

1936. The deposit of an insurance policy by an employer with the board was notice to it that such employer or one of a similar name was desirous of enrolling under the act. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

1935. ✓ Under this statute a physician cannot have an award for medical services rendered an injured employee, even on the written request of the employer to furnish them; his remedy is by court action. *Liest v. United States Fidelity & Guaranty Co.*, 100 Mont. 152, 48 P. (2d) 772.

2945. Apportionment of costs and disbursements. The costs and disbursements incurred in any proceeding or hearing before the board, or a member thereof, may be apportioned between the parties on the same or adverse sides, in the discretion of the board. Costs and disbursements in any proceeding or hearing, arising out of cases under plan No. three may be paid from the industrial accident fund, and in the discretion of the industrial accident board, including the necessary traveling and other expenses and disbursements of the members of the board, its referees or officers or employees incurred while actually conducting investigations, hearings or proceedings, within or without the state of Montana. [L. '37, Ch. 162, § 2, amending R. C. M. 1935, § 2945. Approved and in effect March 16, 1937.]

2947. Jurisdiction of board to hear disputes and controversies.

1936. ✓ The board is the trier of fact, and its findings are equivalent to the verdict of a jury or the findings of a court sitting without a jury. *Doty v. Industrial Accident Fund*, 102 Mont. 511, 59 P. (2d) 782.

1935. ✓ A provision in an order attempting to make an award of additional compensation a full and final settlement was held unauthorized and ineffectual to prevent the board from acting upon a later application for additional compensation within the maximum allowed by the statute, as the board could not thus divest itself of the continued jurisdiction vested in it by the act. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ Under this statute a physician cannot have an award for medical services rendered an injured employee, even on the written request of the employer to furnish them; his remedy is by court action. *Liest v. United States Fidelity & Guaranty Co.*, 100 Mont. 152, 48 P. (2d) 772.

1935. ✓ After an order of the board has become "final," the case cannot be reopened for a reconsideration and redetermination of the questions determined and disposed of, but the judgment of the district court, in this class of cases, determines only that which was before the court for determination, and this is so with respect to the orders and decisions of the board. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ The board may determine questions of law arising in the course of such disputes and controversies. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ Refusal of board to hear petition for new hearing on ground of lack of jurisdiction is not reviewable by appeal, but mandamus is the proper remedy. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

2948. Presumption as to legality of rules, orders, findings, etc., of board.

1938. Where the board awarded a claimant compensation at the rate of \$16.50 a week for 78 weeks for total disability, but there was no finding whether it was permanent or temporary, the clear inference was that it regarded the disability not to be permanent. *Kelly v. West Coast Construction Co.*, 106 Mont. 463, 78 P. (2d) 1078.

1935. Under the compensation act, the board is made the trier of fact; the case comes to the district court with the presumption that the board has decided correctly. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. Where the trial in the district court is had on the record made before the board, the court is not justified in reversing the board if there is any substantial evidence to support its findings. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. When the board renders its decision denying a claim for compensation and thus ending the matter in dispute, the order or decision becomes final, conclusive, and res adjudicata on failure of the aggrieved party to take an appeal within time, and this is so whether the decision is on a question of law, or the merits. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. Defendant's objection that the trial in the district court was de novo and in disregard of the decision of the board, held untenable in view of the facts and judgment recitals. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

2952. Jurisdiction to rescind or amend any order, decision, award, etc.—limitations—amended order—effect. The board shall have continuing jurisdiction over all its orders, decisions, and awards, and may, at any time, upon notice, and after opportunity to be heard, is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor. Provided, that the board shall not have power to rescind, alter, or amend any final settlement or award of compensation more than four (4) years after the same has been made, and provided further that the board shall not have the power to rescind, alter or amend any order approving a full and final compromise settlement of compensation. Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award, shall have the same effect as original orders or awards. [L. '37, Ch. 67, § 1, amending R. C. M. 1935, § 2952. Approved and in effect February 26, 1937.]

Section 2 repeals conflicting laws.

1936. ✓ An employee held not entitled to mandamus the industrial board to grant rehearing to decide whether a certain order and decision had ever been served on the petitioner where the supreme court had, on the whole record in a previous proceeding, decided that sufficient service had been made as required by law. *Magelo v. Industrial Accident Board*, 103 Mont. 477, 64 P. (2d) 113.

1936. ✓ Proper remedy for claim of employee that the injury received was more severe and different from

that for which he was made an award held to have been to prove claimed facts at original hearing or rehearing in time specified or appeal in statutory time. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

1935. ✓ Board's final order as to compensation becomes res judicata if claimant does not take proceedings to review as provided by the act. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

1935. ✓ As used in this act the term "permanent disability" does not mean eternal or everlasting, but merely that the disability is lasting or continuous, as distinguished from temporary; that it will be long continuing. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ After an order of the board has become "final," the case cannot be reopened for a reconsideration and redetermination of the questions determined and disposed of, but the judgment of the district court, in this class of cases, determines only that which was before the court for determination, and this is so with respect to the orders and decisions of the board. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ Sections 2924, 2952, and 2956, being in pari materia, must be construed together, and show a clear legislative intent that no case in which compensation has been awarded shall be finally closed until the maximum period of payments for the disability for which such award has been made has expired, except that, under the amendment of 1929 to section 2952, this power is withdrawn with respect to "any final settlement" after the expiration of two years from the date the order awarding compensation is made, and in cases involving a compromise settlement. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ A petition for new hearing cannot be granted on ground that proof did not support order on original hearing or that order was unreasonable, where petition was filed more than two years after compensation had been paid in full. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

1935. ✓ A provision in an order attempting to make an award of additional compensation a full and final settlement was held unauthorized and ineffectual to prevent the board from acting upon a later application for additional compensation within the maximum allowed by the statute, as the board could not thus divest itself of the continued jurisdiction vested in it by the act. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

2953. Record of proceedings to be kept and testimony to be taken down—attorneys fees—record on review—what constitutes. A full and complete record shall be kept of all proceedings and hearings had before the board, or any member thereof, of any formal hearing had, and all testimony produced before the board or any member thereof shall be taken down by a stenographic reporter appointed by the board, and the parties shall be entitled to be heard in person or by attorney.

Whenever the claimant or plaintiff is represented by an attorney either before the board or the courts, the industrial accident board may, in its discretion or upon the application of the claimant or plaintiff, fix the amount of

the attorney fee of the attorney representing the claimant or plaintiff, and the fee fixed by the board shall be paid by the claimant or plaintiff.

In cases of an action to review any order or decision of the board, a transcript of such testimony, together with all exhibits, and of the pleadings, records, and proceedings in the cause shall constitute the record of the board. [L. '37, Ch. 162, § 3, amending R. C. M. 1935, § 2953. Approved and in effect March 16, 1937.]

Section 4 repeals conflicting laws.

2955. Application for rehearing.

1936. ✓ Proper remedy for claim of employee that the injury received was more severe and different from that for which he was made an award held to have been to prove claimed facts at original hearing or rehearing in time specified or appeal in statutory time. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

1936. ✓ On appeal to the supreme court it was held that the court, not being advised as to the rules of practice of the industrial accident board, could not assume that a proper service of the board's decision had not been made on the claimant for compensation. *State ex rel. Magelo v. Industrial Accident Board*, 102 Mont. 455, 59 P. (2d) 785.

1936. ✓ Where petition for rehearing was filed three years after service upon claimant's attorney of decision of board denying compensation, but not on claimant, where service within 20 days was required, the board had no jurisdiction to hear the petition. *State ex rel. Magelo v. Industrial Accident Board*, 102 Mont. 455, 59 P. (2d) 785.

1936. ✓ An employee held not entitled to mandamus the industrial board to grant rehearing to decide whether a certain order and decision had ever been served on the petitioner where the supreme court had, on the whole record in a previous proceeding, decided that sufficient service had been made as required by law. *Magelo v. Industrial Accident Board*, 103 Mont. 477, 64 P. (2d) 113.

1935. ✓ Where there is a change in the claimant's condition rendering the original order inapplicable to the later condition the board may review the matter, hear further evidence, and modify original order without regard to time specified in section 2955 for rehearing or the ground therefor. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

1935. ✓ Under this section the aggrieved party is in the same position as one moving for a new trial in an ordinary case, and his application relates only to the condition and situation prevailing at the time of the original hearing. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

1935. ✓ Petition for rehearing before the board which set forth all the statutory grounds therefore, except fraud, held sufficient to entitle him to raise all questions which might be raised after denial of petition. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ Claimant could introduce, on appeal to the district court, new evidence which was not introduced before the board, where not known to him at that time although he did not, in his application for a rehearing before the board, set forth specifically the evidence sought to be introduced and state why

it could not have been originally produced, since he had done all that he could do. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ Board's final order as to compensation becomes *res judicata* if claimant does not take proceedings to review as provided by the act. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

2956. Board may at any time diminish or increase an award.

1938. ✓ After making an award it is the duty of the board, under its continuing jurisdiction, to make such further order as the condition of the claimant may then justify. *Kelly v. West Coast Construction Co.*, 106 Mont. 463, 78 P. (2d) 1078.

1935. ✓ A provision in an order attempting to make an award of additional compensation a full and final settlement was held unauthorized and ineffectual to prevent the board from acting upon a later application for additional compensation within the maximum allowed by the statute, as the board could not thus divest itself of the continued jurisdiction vested in it by the act. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ A petition for new hearing cannot be granted on ground that proof did not support order on original hearing or that order was unreasonable, where petition was filed more than two years after compensation had been paid in full. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

1935. ✓ Sections 2924, 2952, and 2956, being in *pari materia*, must be construed together, and show a clear legislative intent that no case in which compensation has been awarded shall be finally closed until the maximum period of payments for the disability for which such award has been made has expired, except that, under the amendment of 1929 to section 2952, this power is withdrawn with respect to "any final settlement" after the expiration of two years from the date the order awarding compensation is made, and in cases involving a compromise settlement. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ As used in this act the term "permanent disability" does not mean eternal or everlasting, but merely that the disability is lasting or continuous, as distinguished from temporary; that it will be long continuing. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ A claimant's right to compensation is limited only by the declaration of the legislature as to the maximum number of weeks fixed by it as a limit. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ Under this section disability has increased where the disability formerly found to be temporary has become permanent. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ Where there is a change in the claimant's condition rendering the original order inapplicable to the later condition the board may review the matter, hear further evidence, and modify original order without regard to time specified in section 2955 for rehearing or the grounds therefor. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

2957. Application for rehearing — contents — rules of procedure.

1935. ✓ Petition for rehearing before the board which set forth all the statutory grounds therefore, except fraud, held sufficient to entitle him to raise all questions which might be raised after denial of petition. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

2959. Appeal to district court.

1938. ✓ Where the evidence before the board is in conflict and the district court, on appeal, has before it the same evidence, or unimportant additional evidence, the court may not reverse the board's decision unless the evidence clearly preponderates against it. *Kelly v. West Coast Construction Co.*, 106 Mont. 463, 78 P. (2d) 1078.

1938. ✓ In passing on the credibility of witnesses the board occupies an advantage superior to that of the trial court or the supreme court when the review in the district court and in the supreme court is upon the record alone, but the rule does not apply where the evidence which is excluded as untrue is in the form of an affidavit. *Ross v. Industrial Accident Board*, 106 Mont. 486, 80 P. (2d) 362.

1935. ✓ When the board renders its decision denying a claim for compensation and thus ending the matter in dispute, the order or decision becomes final, conclusive, and *res adjudicata* on failure of the aggrieved party to take an appeal within time, and this is so whether the decision is on a question of law, or the merits. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ After an order of the board has become "final," the case cannot be reopened for a reconsideration and redetermination of the questions determined and disposed of, but the judgment of the district court, in this class of cases, determines only that which was before the court for determination, and this is so with respect to the orders and decisions of the board. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ A provision in an order attempting to make an award of additional compensation a full and final settlement was held unauthorized and ineffectual to prevent the board from acting upon a later application for additional compensation within the maximum allowed by the statute, as the board could not thus divest itself of the continued jurisdiction vested in it by the act. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

2960. How appeal taken — notice — record — trial.

1938. ✓ The weight of the evidence and the credibility of the witnesses is usually for the board where there is substantial conflict in the evidence and its conclusions on the facts will not be disturbed on appeal to the district court, but where there is no substantial conflict in the evidence the case comes before the court in the nature of an agreed statement of facts, leaving but a question of law for determination. *Ross v. Industrial Accident Board*, 106 Mont. 486, 80 P. (2d) 362.

1936. ✓ On appeal, where there is no additional evidence adduced before the court, the re-examination is a review and not a *trial de novo*, and the decision of the board can be overturned only if on an examination of the cold record it can be said that the evidence clearly preponderates against that decision. *Doty v. Industrial Accident Fund*, 102 Mont. 511, 59 P. (2d) 782.

1936. ✓ On appeal to the district court evidence of the claimant's continuing disability held admissible. *Koski v. Murray Hospital*, 102 Mont. 109, 56 P. (2d) 179.

1936. ✓ Where the record on appeal was in a state of confusion in regard to the evidence, and the board had denied a motion for a rehearing, the district court did not abuse its discretion in trying the case *de novo*, although much of the evidence was repetitious. *Tweedie v. Industrial Accident Board*, 101 Mont. 256, 53 P. (2d) 1145.

1935. ✓ Defendant's objection that the trial in the district court was *de novo* and in disregard of the decision of the board, held untenable in view of the facts and judgment recitals. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ Refusal of board to hear petition for new hearing on ground of lack of jurisdiction is not reviewable by appeal, but mandamus is the proper remedy. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

1935. ✓ Where the trial in the district court is had on the record made before the board, the court is not justified in reversing the board if there is any substantial evidence to support its findings. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ Under the compensation act, the board is made the trier of fact; the case comes to the district court with the presumption that the board has decided correctly. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ If the appeal is heard upon the record of the board alone, it is a review; if additional testimony is taken, to that extent it is a trial *de novo*. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ Defendant's objection to introduction in evidence of depositions in compensation case, on ground that they were taken long before a question of fact had been raised, came too late when first made on the proffer thereof and no motion to suppress had been made prior thereto, although opposing counsel had taken part in the taking thereof. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ Claimant could introduce, on appeal to the district court, new evidence which was not introduced before the board, where not known to him at that time although he did not, in his application for a rehearing before the board, set forth specifically the evidence sought to be introduced and state why it could not have been originally produced, since he had done all that he could do. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ If the evidence before the district court does not clearly preponderate against the findings of the board, a judgment reversing the board will in turn be reversed by the supreme court; but if the evidence does so preponderate a judgment of the district court reversing the board must be sustained. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ An appeal to the district court in compensation case is a special proceeding within the meaning of section 10645, in regard to taking depositions. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ "Good cause" for the introduction of additional testimony was shown where claimant was in bed sick at time of hearing before board and was advised by it that his presence was not required and that it would protect his interests, where he was too poor to employ counsel, and able opposing

counsel subjected claimant's witnesses to severe cross-examination. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ Preponderance of evidence held against board's finding that claimant's neurosis was not caused by his injury sustained when he fell from scaffold. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ What is "good cause" for introduction of additional testimony is question for court's discretion. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ Application to introduce additional testimony made in presence of opposing counsel, who had notice of application, at beginning of trial was in good time. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

2961. Appearances — setting aside conclusions, orders, etc., of board — judgment and findings.

1938. ✓ It is not necessary that the court resubmit the case to the board instead of modifying or changing its decision. *O'Neil v. Industrial Accident Fund*, 107 Mont. 176, 81 P. (2d) 688.

1936. ✓ It is proper for the district court to hear the case over again on properly received new evidence, instead of resubmitting such evidence to the board where the board denied a rehearing. *Tweedie v. Industrial Accident Board*, 101 Mont. 256, 53 P. (2d) 1145.

1936. ✓ Where, on appeal by claimant from a final award, made after the expiration of the period for which a prior award was made and limiting the claimant to the amount awarded, the district court properly set aside the award on evidence that the disability still continued. *Koski v. Murray Hospital*, 102 Mont. 109, 56 P. (2d) 179.

1936. ✓ The district court's refusal to dismiss an appeal from an order of the board, made after the expiration of the period for which the board made a prior award and limiting the claimant finally to that sum, was held proper, since the claimant had a right to show that she was still suffering disability. *Koski v. Murray Hospital*, 102 Mont. 109, 56 P. (2d) 179.

1935. ✓ The board's decision on the question of disability, whether it is partial or total, can only be reversed if arbitrary and founded on no substantial evidence. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

2962. Appeals to supreme court.

1938. ✓ Even though the board, on the evidence before it, might have been fully warranted in denying compensation, yet when additional evidence before the district court explained away matters on which the board might have been justified in denying compensation, the supreme court must sustain the action of the court if it is supported by substantial evidence. *O'Neil v. Industrial Accident Fund*, 107 Mont. 176, 81 P. (2d) 688.

1938. ✓ In passing on the credibility of witnesses the board occupies an advantage superior to that of the trial court or the supreme court when the review in the district court and in the supreme court is upon the record alone, but the rule does not apply where the evidence which is excluded as untrue is in the form of an affidavit. *Ross v. Industrial Accident Board*, 106 Mont. 486, 80 P. (2d) 362.

1936. ✓ On appeal the supreme court will not consider medical works not brought to the attention of the industrial accident board. *Doty v. Industrial Accident Board*, 102 Mont. 511, 59 P. (2d) 782.

1936. ✓ On appeal the supreme court cannot consider matters dehors the record to discredit witnesses who, on the record, appear to be entitled to full credit as men of recognized standing in their profession. *Doty v. Industrial Accident Board*, 102 Mont. 511, 59 P. (2d) 782.

1936. The functions to be performed by the board in compliance with a mandate on remittur of the supreme court held purely ministerial, and not quasi-judicial, where the board was directed to enter an award, in a proper case, despite the fact that the employer had neither enrolled with the board nor filed an insurance policy. *State ex rel. Miller v. Industrial Accident Board*, 102 Mont. 206, 56 P. (2d) 1087.

1936. ✓ Where the facts established the right of the employee to award under this section, the board, on remittur from the supreme court with directions to enter the award, should have done so without granting rehearing at insistence of insurance carrier. *State ex rel. Miller v. Industrial Accident Board*, 102 Mont. 206, 56 P. (2d) 1087.

1936. ✓ The supreme court will not take judicial notice of the provisions of the rules of practice before the compensation board. *State ex rel. Magelo v. Industrial Accident Board*, 102 Mont. 455, 59 P. (2d) 785.

1936. ✓ On appeal to the supreme court it was held that the court, not being advised as to the rules of practice of the industrial accident board, could not assume that a proper service of the board's decision had not been made on the claimant for compensation. *State ex rel. Magelo v. Industrial Accident Board*, 102 Mont. 455, 59 P. (2d) 785.

1936. ✓ On appeal, where there is no additional evidence adduced before the court, the re-examination is a review and not a trial de novo, and the decision of the board can be overturned only if on an examination of the cold record it can be said that the evidence clearly preponderates against that decision. *Doty v. Industrial Accident Fund*, 102 Mont. 511, 59 P. (2d) 782.

1936. ✓ The supreme court will not reverse the finding of the district court except where the evidence clearly preponderates against it. *Tweedie v. Industrial Accident Board*, 101 Mont. 256, 53 P. (2d) 1145.

1935. ✓ A finding of the court that the claimant suffered partial disability, and an allowance, in the same order, of maximum weekly compensation for a lesser number of weeks than the maximum for total disability were inconsistent and required a reversal of the award and remand for further proceedings. *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

1935. ✓ A provision in an order attempting to make an award of additional compensation a full and final settlement was held unauthorized and ineffectual to prevent the board from acting upon a later application for additional compensation within the maximum allowed by the statute, as the board could not thus divest itself of the continued jurisdiction vested in it by the act. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ When the board renders its decision denying a claim for compensation and thus ending the matter in dispute, the order or decision becomes final, conclusive, and res adjudicata on failure of the aggrieved party to take an appeal within time, and this is so whether the decision is on a question

of law, or the merits. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ If the evidence before the district court does not clearly preponderate against the findings of the board, a judgment reversing the board will in turn be reversed by the supreme court; but if the evidence does so preponderate a judgment of the district court reversing the board must be sustained. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ Preponderance of evidence held against board's finding that claimant's neurosis was not caused by his injury sustained when he fell from scaffold. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. ✓ The board's decision on the question of disability, whether it is partial or total, can only be reversed if arbitrary and founded on no substantial evidence. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ Cross-assignments of error by claimant as respondent in compensation case on appeal from district court's decision were not considered by supreme court where he did not appeal and did not bring matter to lower court's attention by motion for new trial or otherwise. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

2964. Court to give liberal construction to act.

1936. ✓ Liberal construction of the act is no justification for disregarding the plain statutory provisions thereof. *State ex rel. Magelo v. Industrial Accident Board*, 102 Mont. 455, 59 P. (2d) 785.

1936. ✓ Cited in *Sullivan v. Roman Catholic Bishop of Helena et al.*, 103 Mont. 117, 61 P. (2d) 838.

1936. Cited in *Tweedie v. Industrial Accident Board*, 101 Mont. 256, 53 P. (2d) 1145.

1936. ✓ The workmen's compensation act must be read as a whole, and every provision and part thereof given proper and harmonious consideration. *Koppang v. Sevier*, 101 Mont. 234, 53 P. (2d) 455.

1936. ✓ Words and phrases in act amendatory of workmen's compensation act must be understood in the light of the full context of the chapter and construed in accordance with statutory rules; they must be taken to mean something practical, reasonable, and consonant with the declared intention of the legislative body. *Koppang v. Sevier*, 101 Mont. 234, 53 P. (2d) 455.

1936. ✓ Where the terms of the statute are plain, unambiguous, direct, and certain, the statute speaks for itself and there is nothing to construe. *Chisholm v. Vocational School for Girls*, 103 Mont. 503, 64 P. (2d) 838.

1935. ✓ The construction of the act must conform to the intent of the lawmakers. *Meznarich v. Republic Coal Co.*, 101 Mont. 78, 53 P. (2d) 82.

1935. ✓ Rule of liberal construction of act does not permit disregard of all rules and regulations thereof, especially as to times when certain steps must be taken. *Shugg v. Anaconda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435.

1935. ✓ Liberal construction of compensation act for the protection of laymen-claimants cannot be extended to the disregard of the ordinary rules of practice and procedure, particularly when the acts or omissions of counsel for the parties are under consideration. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

2978. Employer electing plan No. 2 to insure his liability.

1936. ✓ This act is not founded on the theory of life insurance, nor is it a social insurance law. *Sullivan v. Roman Catholic Bishop of Helena et al.*, 103 Mont. 117, 61 P. (2d) 838.

2979. Duty of employer electing plan number two—amount of insurance necessary.

1936. ✓ Where employer was enrolled and successor filed insurance policy with board it was estopped to deny that successor was under act, and thus defeat award to employee. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

1936. ✓ The provisions relative to enrollment under the act are directory only, not mandatory. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

1936. ✓ Neither the failure of the employer to file a binder policy with the board nor affidavits of the posting of notices will defeat the insurer's liability, as such provisions are merely directory. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

2980. Policies to contain what.

1936. ✓ The method of collecting an award provided by the workmen's compensation act is exclusive, and execution may not be issued against the property of the employer. *State ex rel. Murray Hospital v. District Court*, 102 Mont. 350, 57 P. (2d) 813.

2981. Agreement to be contained in policies of insurance—deposit of bonds.

1936. ✓ The method of collecting an award provided by the workmen's compensation act is exclusive, and execution may not be issued against the property of the employer. *State ex rel. Murray Hospital v. District Court*, 102 Mont. 350, 57 P. (2d) 813.

1936. ✓ Neither the failure of the employer to file a binder policy with the board nor affidavits of the posting of notices will defeat the insurer's liability, as such provisions are merely directory. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

2988. Policies to contain clause agreeing to do what—approval or change.

1936. ✓ Neither the failure of the employer to file a binder policy with the board nor affidavits of the posting of notices will defeat the insurer's liability, as such provisions are merely directory. *Miller v. Aetna Life Ins. Co.*, 101 Mont. 212, 53 P. (2d) 704.

2989. Deposits under plan No. 2 as security.

1936. ✓ The method of collecting an award provided by the workmen's compensation act is exclusive, and execution may not be issued against the property of the employer. *State ex rel. Murray Hospital v. District Court*, 102 Mont. 350, 57 P. (2d) 813.

2990. What necessary in electing plan No. 3—percentage of pay-roll to be paid in under plan.

1938. Sections 2990 et seq. cited in *Kelly v. West Coast Construction Co.*, 106 Mont. 463, 78 P. (2d) 1078.

1938. Sections 2990 et seq. cited in *Ross v. Industrial Accident Board*, 106 Mont. 486, 80 P. (2d) 362.

1938. Cited in *O'Neil v. Industrial Accident Fund*, 107 Mont. 176, 81 P. (2d) 688.

2993. Intent and purpose of plan No. 3—fund to be paid for what purpose only—accounts.

1935. ✓ The state industrial accident board and the funds administered by it under plan 3 of the workmen's compensation act are not included within the scope and meaning of the phrase "insurance carrier," and a physician may not be paid therefrom his fee for the attendance on an injured employee, even on the written request of the employer. *Liest v. United States Fidelity & Guaranty Co.*, 100 Mont. 152, 48 P. (2d) 772.

CHAPTER 256A

UNEMPLOYMENT COMPENSATION LAW

Section

3033.1. Title of act.

DECLARATION OF STATE PUBLIC POLICY

Section

3033.2. Public policy as to unemployment—economic insecurity—enactment under police power.

BENEFITS

Section

3033.3. (a) Payment of benefits.
(b) Weekly benefit amount for total unemployment.
(c) Wage record.
(d) Duration of benefits.

BENEFIT ELIGIBILITY CONDITIONS

Section

3033.4. Eligibility for benefits—registration and report at employment office—claim—waiting period—minimum of earned wages.

DISQUALIFICATION FOR BENEFITS

Section

3033.5. Leaving work—discharge for misconduct—failure to apply or accept work—suitability of work—when benefits not denied—labor dispute—unfavorable conditions—labor union compulsion—stoppage of work—participation in labor dispute—connection therewith—separate factory defined—dispute caused by employer—non-disqualifying payments—wages due on termination of work—disability compensation—old-age benefits.

CLAIMS FOR BENEFITS

Section

3033.6. (a) Filing—employer to post regulations—commission's deputy—duties—appeal—findings sent to commission—notice to claimant—reconsideration by deputy—time for appeal—benefits pending appeal—modifications of findings—further appeal—appeal tribunal—personnel and function—compensation—commission's powers on review—procedure—record—testimony—witness fees—judicial review—attorneys—court action—jurisdiction—procedure—appeal to supreme court—bond—supersedes.

Section

- (b) Initial determination.
- (c) Appeals.
- (d) Appeal tribunals.
- (e) Commission review.
- (f) Procedure.
- (g) Witness fees.
- (h) Appeal to courts.
- (i) Court review.

CONTRIBUTIONS

Section

- 3033.7. (a) Payment.
 (b) Rate of contributions.
 (c) Study of merit rating.

PERIOD, ELECTION AND TERMINATION
OF EMPLOYER'S COVERAGE

Section

- 3033.8. Approval by commission.

UNEMPLOYMENT COMPENSATION FUND

Section

- 3033.9 (a) Establishment and control—moneys included—administration of fund—duty of state treasurer—separate accounts—clearing account—benefit account—depository—treasurer's bond—withdrawals from trust fund—deposit in benefit account—expenditures—warrants—disposition of balance—disbursement if federal act becomes inoperative.
 (b) Accounts and deposit.
 (c) Withdrawals.
 (d) Disbursement of funds if federal act becomes inoperative.
- 3033.9a. Transfer of funds to railroad unemployment insurance account.

UNEMPLOYMENT COMPENSATION
COMMISSION

Section

- 3033.10. (a) Organization—compensation of members—term of office—chairman—salary—political activity of members—removal—commission to have two divisions—quorum—vacancies.
 (b) Divisions.
 (c) Quorum.

ADMINISTRATION

Section

- 3033.11. (a) Duties and powers of commission—annual report—rules—regulations—publications—personnel—compensation—duties—classifying positions—examinations—appointments—political activities—employers' work records—reports as to employees—confidential—violations—penalties—oaths—depositions—certificates—subpoenas—disobedience—penalty—witnesses—self-incrimination—prosecution—perjury—cooperation with social security board—information to United States agencies—employment both in and out of state.
 (b) Regulations and general and special rules.
 (c) Publication.

Section

- (d) Personnel.
- (e) Records and reports.
- (f) Oaths and witnesses.
- (g) Subpoenas.
- (h) Protection against self-incrimination.
- (i) State-federal cooperation.
- (j) Reciprocal benefit arrangement.

EMPLOYMENT SERVICE

Section

- 3033.12. (a) State employment service—duties—director—acceptance of act of congress—personnel—appointment—disposition of federal money—employment offices—agreements—contributions—acceptance.
 (b) Financing.
- 3033.12a. Unemployment commission—cooperation with railroad retirement board.

UNEMPLOYMENT COMPENSATION
ADMINISTRATION FUND

Section

- 3033.13. (a) Special fund—created—of what consists—how administered—state treasurer's bond.
 (b) Employment service account—appropriation.

COLLECTION OF CONTRIBUTIONS

Section

- 3033.14. (a) Interest on past due contributions.
 (b) Collection—civil actions.
 (c) Priorities under legal dissolutions or distribution of employer's assets.
 (d) Refunds—time and manner of making.

PROTECTION OF RIGHTS AND BENEFITS

Section

- 3033.15. (a) Waiver of rights void—what agreements void—deductions from wages—penalty.
 (b) Limitation of fees—counsel or agent—approval of commission—violation—penalty.
 (c) No assignment of benefits—exemptions—execution—waiver.

PENALTIES

Section

- 3033.16. False statements—violations—penalty—benefits wrongfully received.

REPRESENTATION IN COURT

Section

- 3033.17. Attorneys—criminal prosecutions.

NONLIABILITY OF STATE

Section

- 3033.18. State liability limited to commission fund.

DEFINITIONS

Section

- 3033.19. Definitions as used in this act.

SAVING CLAUSE

Section

- 3033.20. Enacting reservations.
 3033.21. Partial invalidity saving clause—emergency declaration.
 3033.22. Act to be in effect—expiry.
 3033.23. Approval by social security board.
 3033.24. Effective date.

3033.1. Title of act. This act shall be known and may be cited as the "Unemployment Compensation Law". [L. '37, Ch. 137, § 1. Approved and in effect March 16, 1937.]

DECLARATION OF STATE PUBLIC POLICY

3033.2. Public policy as to unemployment — economic insecurity — enactment under police power. As a guide to the interpretation and application of this act, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. [L. '37, Ch. 137, § 2. Approved and in effect March 16, 1937.]

BENEFITS

3033.3. (a) Payment of benefits. Thirty (30) months after the date when contributions first accrue under this act from the employer, benefits shall become payable from the fund to any individual who thereafter is or becomes unemployed and eligible for benefits as is herein prescribed; provided, however, that wages earned for services performed as an employee representative as defined in the railroad unemployment insurance act (52 Stat. 1094), or for services performed for an employer, as defined in said act, shall not be included for the purposes of determining eligibility or weekly benefit amount under this act with respect to any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable on the basis of such wages under any provisions

of this act. All benefits shall be paid through public employment offices in the state of Montana, or other agencies designated by the commission, in accordance with such rules and regulations as the commission may prescribe.

(b) Weekly benefit amount for total unemployment. Each eligible individual, who is totally unemployed (as defined in this act) in any week, shall be paid with respect to such week, benefits at the rate of four per cent (4%) of his total wages in employment for employers in the quarter of his base period wherein his earnings were highest, if a multiple of a dollar, or computed to the next higher multiple of a dollar, but not more than fifteen dollars (\$15.00) per week, nor less than five dollars (\$5.00) per week.

(c) Wage record. The commission shall maintain a record of the wages earned by an individual in accordance with wages earned by him for employment by employers during each quarter.

(d) Duration of benefits. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed sixteen (16) times his weekly benefit amount. [L. '39, Ch. 137, § 1, amending L. '37, Ch. 137, § 3. Approved and in effect March 9, 1939.]

Section 9 repeals conflicting laws.

Note. Subsections (c) and (d) of the laws of 1937 read as follows:

(c) Determination of full-time weekly wage. (1) The full-time weekly wage of any individual means the weekly wages that such individual would receive if he were employed at the most recent wage rate earned by him for employment by an employer during the period prescribed pursuant to paragraph (3) of this subsection, and for the customary scheduled full-time weekly hours prevailing for his occupation in the enterprise in which he last earned wages for employment by an employer during the same period.

(2) If the commission finds that the full-time weekly wage, as above defined, would be unreasonable or arbitrary or not readily determinable with respect to any individual, the full-time weekly wage of such individual shall be deemed to be one-thirteenth of his total wages for employment by employers during that quarter in which such total wages were highest during the period prescribed pursuant to paragraph (3) of this subsection.

(3) The full-time weekly wage of any individual shall be determined and redetermined at such reasonable times as the commission may find necessary to administer this act and may by regulation prescribe. The period hereinabove referred to shall consist of the next to the last completed calendar quarter immediately preceding the date with respect to which an individual's full-time weekly wage is determined, and such of the seven immediately preceding consecutive calendar quarters as the commission may by regulation prescribe.

(d) Duration of benefits. The commission shall compute wage credits for each individual by crediting him with the wages earned by him for employment

by employers during each quarter, or \$390, which ever is the lesser. Benefits paid to any eligible individual shall be charged, in the same chronological order as such wages were earned, against one-sixth of his wage credits which are based upon wages earned during his base period and which have not been previously charged hereunder. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed whichever is the lesser of (1) sixteen times his weekly benefit amount, and (2) one-sixth of such uncharged wage credits with respect to his base period.

(e) **Part-time workers.**

(1) As used in this subsection the term "part-time worker" means an individual whose normal work is in an occupation in which his services are not required for the customary scheduled full-time hours prevailing in the establishment in which he is employed or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which he is employed.

(2) The commission shall prescribe fair and reasonable general rules applicable to part-time workers for determining their full-time weekly wage and the total wages for employment by employers required to qualify such workers for benefits. Such rules shall, with respect to such workers, supersede any inconsistent provisions of this act, but, so far as practicable, shall secure results reasonably similar to those provided in the analogous provisions of this act. [L. '37, Ch. 137, § 3. Approved and in effect March 16, 1937.]

BENEFIT ELIGIBILITY CONDITIONS

3033.4. Eligibility for benefits — registration and report at employment office — claim — waiting period — minimum of earned wages. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that—

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the commission may prescribe, except that the commission may, by regulation, prescribe that such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act, provide for registration and reporting for work by mail or through other governmental agencies.

(b) He has made a claim for benefits in accordance with the provisions of section 6 (a) of this act [3303.6].

(c) He is able to work, and is available for work.

(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of two (2) weeks. No week shall be counted as a week of total unemployment for the purposes of this subsection:

(1) If benefits have been paid with respect thereto;

(2) Unless the individual was eligible for benefits with respect thereto in all respects except for the requirements of subsections (b) and (e) of this section;

(3) Unless it occurs within the thirteen (13) consecutive weeks preceding the week for which he claims benefits, provided that this requirement shall not interrupt the payments of benefits for consecutive weeks of unemployment; and provided further, that any individual who, prior to the first day of his benefit year, shall have accumulated such two (2) waiting period weeks, shall not be required to accumulate more than two (2) additional waiting period weeks during his ensuing benefit year.

(4) Unless it occurs after benefits first could become payable to any individual under this act.

(e) He has within the base period earned wages for employment by employers equal to thirty (30) times his weekly benefit amount. [L. '39, Ch. 137, § 2, amending L. '37, Ch. 137, § 4. Approved and in effect March 9, 1939.]

Section 9 repeals conflicting laws.

DISQUALIFICATION FOR BENEFITS

3033.5. Leaving work — discharge for misconduct — failure to apply or accept work — suitability of work — when benefits not denied — labor dispute — unfavorable conditions — labor union compulsion — stoppage of work — participation in labor dispute — connection therewith — separate factory defined — dispute caused by employer — non-disqualifying payments — wages due on termination of work — disability compensation — old-age benefits. An individual shall be disqualified for benefits—

(a) If he has left work voluntarily without good cause, if so found by the commission, for a period of not less than one (1) or more than [five] (5) weeks (in addition to and immediately following the waiting period), as determined by the commission according to the circumstances in each case.

(b) If he has been discharged for misconduct connected with his work, if so found by the commission, for a period of not less than the one (1) nor more than the nine (9) weeks (in addition to and immediately following the waiting period), as determined by the commission in each case according to the seriousness of the misconduct.

(c) If the commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commission. Such disqualification shall continue for the

week in which such failure occurred and for not less than the one nor more than the five weeks which immediately follow such week (in addition to the waiting period) as determined by the commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the commission finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the commission that—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the commission upon investiga-

tion, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state of Montana or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) Wages in lieu of notice or separation or termination allowance;

(2) Compensation for temporary disability under the workmen's compensation law of any state or under a similar law of the United States, or

(3) Old age benefits under Title II of the social security act, as amended, or similar payments under any act of congress, provided, that if such remuneration as referred to in (1) (2) and (3) of this subsection is less than the benefits which would otherwise be due under this act, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. [L. '37, Ch. 137, § 5. Approved and in effect March 16, 1937.]

CLAIMS FOR BENEFITS

3033.6. (a) Filing—employer to post regulations — commission's deputy — duties — appeal—findings sent to commission — notice to claimant — reconsideration by deputy—time for appeal—benefits pending appeal — modifications of findings — further appeal — appeal tribunal — personnel and function — compensation — commission's powers on review — procedure — record — testimony — witness fees — judicial review — attorneys — court action — jurisdiction — procedure — appeal to supreme court — bond — supersedeas. Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the commission to each employer without cost to him.

(b) **Initial determination.** A representative designated by the commission, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable

and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal which shall make its decisions with respect thereto in accordance with the procedure prescribed in subsection (c) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of section 5 [3033.5] (d) of this act, the deputy shall promptly transmit his full finding of fact with respect to that subsection to the commission, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection which shall be deemed the decision of the deputy. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor. Unless the claimant or any such interested party, within five calendar days after the delivery of such notification, or within seven calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final decision of the commission, shall be paid only after such decision. Provided, that if an appeal tribunal affirms a decision of a deputy, or the commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

(c) **Appeals.** Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the commission, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of this section.

(d) **Appeal tribunals.** To hear and decide disputed claims, the commission shall appoint such impartial appeal tribunals as are necessary for the proper administration of this act, consisting in each case of either a salaried examiner selected in accordance with section 11 [3033.11] (d) of this act, or a body con-

sisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers, and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commission and be paid a fee of not more than \$10.00 per day of active service on such tribunal plus necessary expense. No person shall participate on behalf of the commission in any case in which he is an interested party. The commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(e) **Commission review.** The commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the commission shall be heard by a quorum thereof in accordance with the requirements in subsection (c) of this section. The commission shall promptly notify the interested parties of its findings and decision.

(f) **Procedure.** The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the commission for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules or procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) **Witness fees.** Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the commission. Such fees shall be deemed a part of the expense of administering this act.

(h) **Appeal to courts.** Any decision of the commission in the absence of an appeal therefrom as herein provided shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the commission as provided by this act. The commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the commission and has been designated by it for that purpose, or at the commission's request, by the attorney general.

(i) **Court review.** Within ten days after the decision of the commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides against the commission for the review of its decision, in which action any other party to the proceeding before the commission shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the commission or upon such person as the commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the commission shall forthwith mail one such copy to each such defendant. With its answer, the commission shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. The commission may also in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of the commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such action, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this state. An appeal may be taken from the decision of the said district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this act, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the commission and no bond shall be required

for entering such appeal. Upon the final determination of such judicial proceeding, the commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the commission shall so order. [L. '37, Ch. 137, § 6. Approved and in effect March 16, 1937.]

CONTRIBUTIONS

3033.7. (a) **Payment.**

(1) On and after January 1, 1937, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages payable for employment (as defined in this act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as the commission may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(b) **Rate of contributions.**

(1) Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(a) One and eight-tenths per centum with respect to employment during the calendar year 1937;

(b) Two and seven-tenths per centum with respect to employment during the calendar years 1938, 1939, 1940, 1941, and for each calendar year thereafter.

(c) **Study of merit rating.** The commission shall investigate and study the operation of this act and the actual experience hereunder with a view to determining the advisability of establishing a rating system which would equitably rate the unemployment risk and fix the contribution to the fund of each employer or industry and would encourage the stabilization of employment. The commission shall submit their report and recommendations to the governor and the legislature not later than January 1, 1945. [L. '39, Ch. 137, § 3, amending L. '37, Ch. 137, § 7. Approved and in effect March 9, 1939.]

Section 9 repeals conflicting laws.

Note. Subsections (b) and (c) of the laws of 1937 read as follows:

(b) **Rate of contribution.** (1) Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(a) One and eight-tenths per centum with respect to employment during the calendar year 1937;

(b) Two and seven-tenths per centum with respect to employment during the calendar years 1938, 1939, 1940, 1941.

(3) With respect to employment after June 30, 1942, the percentage determined pursuant to subsection (c) of this section.

(c) **Future rates based on benefit experience.** The commission shall, for the period of twelve months commencing July 1, 1942, and for each calendar year thereafter, classify employers in accordance with their actual contribution and benefit experience and shall determine for each employer the rate of contribution which shall apply to him throughout the calendar year in order to reflect said experience and classification. In making such classification, the commission shall take account of the degree of unemployment hazard shown by each employer's experience, and of any other measurable factors which it finds bear a reasonable relation to the purposes of this subsection. It may apply such form of classification or rating system which in its judgment is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment. The general basis of classification proposed to be used for any calendar year shall be subject to fair notice, opportunity for hearing, and publication. The rates for any calendar year shall be so fixed that they would, if applied to all employers and their annual pay rolls of the preceding calendar year, have yielded total contributions equaling approximately 2.7 per centum of the total of all such annual pay rolls. The commission shall determine the contribution rate applicable to each employer for any calendar year subject to the following limitations:

(1) Each employer's contribution rate shall be 2.7 per centum, unless and until there shall have been three calendar years throughout which any individual in his employ could have received benefits if unemployed and eligible.

(2) No employer's contribution rate shall be less than 1 per centum.

(3) No employer's contribution rate shall be more than 3.6 per centum. [L. '37, Ch. 137, § 7. Approved and in effect March 16, 1937.]

PERIOD, ELECTION AND TERMINATION OF EMPLOYER'S COVERAGE

3033.8. Approval by commission. (a) Any employing unit which is or becomes an employer subject to this act within any calendar year, shall be subject to this act during the whole of such calendar year.

(b) Except as otherwise provided in subsection (c) of this section an employing unit shall cease to be an employer subject to this act only as of the first day of January, of any calendar year, only if it files with the commission prior to the last day of February, of such year, a written application for termination of coverage, and the commission finds that there were no twenty (20) different days, each day being in a different week within the preceding calendar year within which such employing unit employed one (1) or more individuals in an employment subject to this act, and the total wages payable for employ-

ment by said employer in the preceding calendar year did not exceed \$500.00. For the purposes of this subsection, the two or more employing units mentioned in paragraph (2) or (3) of section 19 [3033.19] (i) shall be treated as a single employing unit.

(c) An employing unit not otherwise subject to this act, which files with the commission its written election to become an employer subject hereto for not less than two (2) calendar years, shall, with the written approval of such election by the commission become an employer subject hereto to the same extent as all other employers as of the date stated in such approval, and shall cease to be subject hereto as of January 1, of any calendar year, subsequent to such two (2) calendar years only if at least thirty (30) days prior to said first day of January it has filed with the commission a written notice to that effect.

Any employing unit for which services that do not constitute employment as defined in this act, are performed may file with the commission, a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this act for not less than two (2) calendar years. Upon the written approval of such election by the commission, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1, of any calendar year subsequent to such two (2) calendar years only if at least thirty (30) days prior to such first day of January such employing unit has filed with the commission a written notice to that effect. [L. '39, Ch. 137, § 4, amending L. '37, Ch. 137, § 8. Approved and in effect March 9, 1939.]

Section 9 repeals conflicting laws.

UNEMPLOYMENT COMPENSATION FUND

3033.9. (a) Establishment and control — moneys included — administration of fund — duty of state treasurer — separate accounts — clearing account — benefit account — depository — treasurer's bond — withdrawals from trust fund — deposit in benefit account — expenditures — warrants — disposition of balance — disbursement if federal act becomes operative. There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this act. This fund shall consist of (1) all contributions collected under this act, together with any interest thereon

collected pursuant to section 14 [3033.14] of this act; (2) all fines and penalties collected pursuant to the provisions of this act; (3) interest earned upon any moneys in the fund; (4) any property or securities acquired through the use of moneys belonging to the fund; and (5) all earnings of such property or securities. All moneys in the fund shall be mingled and undivided.

(b) **Accounts and deposit.** The state treasurer shall be ex-officio the treasurer and custodian of the fund who shall administer such fund in accordance with the directions of the commission and shall issue his warrants upon it in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund three separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to section 14 [3033.14] of this act may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the state may be deposited but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the commission and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund.

(c) **Withdrawals.** Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission. The commission shall from time to time requisition

from the unemployment trust fund such amounts, not exceeding the amounts standing to this state account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the counter signature of a member of the commission or its duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the commission, shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in subsection (b) of this section.

(d) **Disbursement of funds if federal act becomes inoperative.** If Title III or IX of the federal social security act is declared unconstitutional or in any way is inoperative, this act automatically becomes inoperative under the provisions of this act, and the funds which then remain in the unemployment trust fund shall immediately be paid to the state treasurer to be paid into the unemployment compensation fund and funds there held shall be immediately distributed, upon order of the commission, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of one (1) year it shall be paid to the general fund of the state of Montana. [L. '37, Ch. 137, § 9. Approved and in effect March 16, 1937.]

3033.9a. Transfer of funds to railroad unemployment insurance account. Notwithstanding any requirements of section 9 [3033.9] of the Montana unemployment compensation law (chapter 137 of the twenty-fifth legislative assembly, 1937) [3033.1-3033.24], the unemployment compensation commission of Montana, shall, prior to July 1, 1939, authorize and direct the secretary of the treasury of the United States to transfer from the unemployment compensation trust fund for the state

of Montana, established and maintained pursuant to section 904 of the federal social security act, as amended, to the railroad unemployment insurance account established and maintained pursuant to section 10 of the railroad unemployment insurance act (52 Stat. 1094), an amount hereinafter referred to as the preliminary amount; and shall, prior to December 31, 1939, authorize and direct the secretary of the treasury of the United States to transfer from the Montana unemployment compensation trust fund to said railroad unemployment insurance account an additional amount, hereinafter referred to as the liquidating amount. The preliminary amount shall consist of that proportion of the balance in the employment compensation trust fund as of June 30, 1939, as the total amount of contributions collected from "employers" (as the term employer is defined in section 1 (a) of the railroad unemployment insurance act) and credited to the Montana unemployment compensation trust fund bears to all contributions theretofore collected under this act and credited to such fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" (as the term employer is defined in section 1 (a) of the railroad unemployment insurance act) pursuant to the provisions of this act during the period from July 1, 1939, to December 31, 1939, inclusive. [L. '39, Ch. 167, § 1. Approved and in effect March 15, 1939.]

UNEMPLOYMENT COMPENSATION COMMISSION

3033.10. (a) Organization — compensation of members — term of office — chairman — salary — political activity of members — removal — commission to have two divisions — quorum — vacancies. There is hereby created a commission to be known as the unemployment compensation commission of Montana. The commission shall consist of three members who shall be appointed by the governor on a non-partisan merit basis within sixty days after the passage of this act and after any vacancy occurs in its membership. Two of the members of the commission shall serve on a per diem basis and shall be paid at the rate of ten dollars (\$10.00) per day of service plus actual and necessary expenses, provided, however, that the total per diem compensation in any one year for each of the said two members shall not exceed the sum of five hundred dollars (\$500.00). Each per diem member shall hold office for a term of six years, except that (1) a member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of office of the member first

taking office after the date of enactment of this act shall expire, as designated by the governor at the time of appointment, one at the end of three years, the other at the end of six years. The third member of the commission, who shall be designated as chairman at the time of his appointment, shall be paid a full-time salary in an amount to be fixed by the governor and shall be the executive director. During his term of membership on the commission no member shall serve as an officer or committee member of any political party organization. The governor may at any time, after notice and hearing, remove any commissioner for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(b) **Divisions.** The commission shall establish two coordinate divisions: The Montana state employment service division created pursuant to section 12 [3033.12] of this act, and the unemployment compensation division. Each division shall be responsible to the executive director for the discharge of its distinctive function. Each division shall be a separate administrative unit with respect to personnel, budget, and duties except insofar as the commission may find that such separation is impracticable.

(c) **Quorum.** Any two commissioners shall constitute a quorum. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission. [L. '37, Ch. 137, § 10. Approved and in effect March 16, 1937.]

ADMINISTRATION

3033.11. (a) Duties and powers of commission — annual report — rules — regulations — publications — personnel — compensation — duties — classifying positions — examinations — appointments — political activities — employers' work records — reports as to employees — confidential — violations — penalties — oaths — depositions — certificates — subpoenas — disobedience — penalty — witnesses — self-incrimination — prosecution — perjury — cooperation with social security board — information to United States agencies — employment both in and out of state. It shall be the duty of the commission to administer this act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditure, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this act, which the commission shall prescribe. The commis-

sion shall determine its own organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. Not later than the 1st day of February of each year, the commission shall submit to the governor a report covering the administration and operation of this act during the preceding calendar year and shall make such recommendations for amendments to this act as the commission deem proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

(b) **Regulations and general and special rules.** General and special rules may be adopted, amended, or rescinded by the commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the secretary of the state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the commission and shall become effective in the manner and at the time prescribed by the commission.

(c) **Publication.** The commission shall cause to be printed for distribution to the public the text of this act, the commission's regulations and general and special rules, its annual reports to the governor, and any other material the commission deems relevant and suitable and shall furnish the same to any person upon application therefor.

(d) **Personnel.** Subject to other provisions of this act, the commission is authorized to appoint, fix the compensation and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this act. The commission may delegate to any such persons such power and authority as it deems reasonable and proper

for the effective administration of this act, and may in its discretion bond any person handling money or signing checks hereunder. The commission shall classify positions under this act and shall establish salary schedules and minimum personnel standards for the positions so classified. The commission shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments of not to exceed six months in duration, such personnel shall be appointed on the basis of efficiency and fitness as determined in such examinations. No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office shall be appointed or employed under this act. The commission shall establish and enforce fair and reasonable regulations for appointments, promotions, and demotions based upon ratings of efficiency and fitness and for terminations for cause.

(e) **Records and reports.** Each employing unit shall keep true and accurate work records, containing such information as the commission may prescribe. Such records, shall be open to inspection and shall be subject to being copied by the commission or its authorized representative at any reasonable time and as often as may be necessary. The commission and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the commission deems necessary to the effective administration of this act. Information thus obtained or obtained from any individual pursuant to the administration of this act shall except to the extent necessary for the proper presentation of a claim be held confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the commission or appeal tribunal shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the commission who violates any provision of this section shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned for not longer than 90 days, or both.

(f) **Oaths and witnesses.** In the discharge of the duties imposed by this act, the chairman of an appeal tribunal and any duly authorized representative or member of the commission shall have power to administer

oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this act.

(g) **Subpoenas.** In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the chairman of an appeal tribunal, the commission or any duly authorized representative of any of them shall have jurisdiction to issue to such person an order requiring such person to appear before the chairman of an appeal tribunal, a commissioner, the commission, or any duly authorized representative of any of them there to produce evidence if so ordered or there to give testimony touching the matters under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power to do so, in obedience to a subpoena of the commission, the chairman of an appeal tribunal or any duly authorized representative of any of them shall be punished by a fine of not more than \$200 or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(h) **Protection against self-incrimination.** No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commission, the chairman of an appeal tribunal or any duly authorized representative of any of them or in obedience to the subpoena of the commission or any member thereof or any duly authorized representative of the commission in any cause or proceeding before the commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such

individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(i) **State-federal cooperation.** In the administration of this act, the commission shall cooperate to the fullest extent consistent with the provisions of this act, with the social security board, created by the social security act, approved August 14, 1935, as amended; shall make such reports, in such form and containing such information as the social security board may from time to time require, and shall comply with such provisions as the social security board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the social security board governing the expenditures of such sums as may be allotted and paid to this state under Title III of the social security act for the purpose of assisting in the administration of this act.

Upon request therefor the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

(j) **Reciprocal benefit arrangement.** The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this act, or under similar provisions of the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests, and will not result in any substantial loss to the fund. [L. '37, Ch. 137, § 11. Approved and in effect March 16, 1937.]

EMPLOYMENT SERVICE

3033.12. (a) **State employment service — duties — director — acceptance of act of congress — personnel — appointment — disposition of federal money — employment offices — agreements — contributions — acceptance.** The commission shall create a division to be

known as the Montana state employment service which division shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this act, and for the purpose of performing such duties as are within the purview of the act of congress entitled: "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933 [48 Stat. 113; U. S. C., Title 29, Sec. 49 (c)], as amended. The said division shall be administered by a full time salaried director, who shall be charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The Montana state employment service is hereby designated and constituted the agency of this state for the purpose of said act. The commission is directed to appoint the director, other officers, and employees of the Montana state employment service. Such appointments shall be made in accordance with regulations prescribed by the director of the United States employment service.

(b) **Financing.** All moneys received by this state under the said act of congress, as amended, shall be paid into the special "employment service account" in the unemployment compensation administration fund, and said moneys are hereby made available to the Montana state employment service to be expended as provided by this section and by said act of congress. For the purpose of establishing and maintaining free public employment offices, the Montana state employment service is authorized to enter into agreements with any political subdivisions of this state or with any private, nonprofit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment service account. [L. '37, Ch. 137, § 12. Approved and in effect March 16, 1937.]

3033.12a. Unemployment commission — cooperation with railroad retirement board. The unemployment compensation commission of Montana is hereby authorized to cooperate with and enter into agreements with the rail-

road retirement board with respect to establishment, maintenance and use of Montana state employment service facilities, and to make available to the said railroad retirement board the records of the commission relating to employer's status and contributions received from employers covered by the railroad unemployment insurance act, together with employee wage records and such other data as the railroad retirement board may deem necessary or desirable for the administration of the railroad unemployment insurance act, (52 Stat. 1094); that any monies received by the unemployment compensation commission of Montana from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance and use of Montana state employment service facilities, shall be paid into and credited the proper division of the unemployment compensation administration fund set up and established under section 13 [3033.13] of the Montana unemployment compensation act. [L. '39, Ch. 167, § 2. Approved and in effect March 15, 1939.]

UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND

3033.13. (a) Special fund — created — of what consists — how administered — state treasurer's bond. There is hereby created in the state treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the commission. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this act, and for no other purpose whatsoever. The fund shall consist of all moneys appropriated by this state, and all moneys received from the United States of America, or any agency thereof, including the social security board and the United States employment service, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the commission for expenditure consistent with this act. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration fund in an amount to be fixed by the commission and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond

given by the treasurer of the unemployment compensation fund under section 9 of this act, shall be paid from the moneys in the unemployment compensation administration fund.

(b) **Employment service account — appropriation.** A special “employment service account” shall be maintained as a part of the unemployment compensation administration fund for the purpose of maintaining the public employment offices established pursuant to section 12 of this act [3033.12] and for the purpose of cooperating with the United States employment service. There is hereby appropriated to the employment service account of the unemployment compensation administration fund, from any money in the state treasury not otherwise appropriated, for the period beginning July 1st, 1937, and ending June 30, 1938, the sum of \$13,021.26 and, for the period beginning July 1st, 1938, and ending June 30, 1939, the sum of \$13,021.26. In addition, there shall be paid into such account the moneys designated in section 12 (b) of this act [3033.12], and such moneys as are apportioned for the purposes of this account from any moneys received by this state under Title III of the social security act, as amended. [L. '37, Ch. 137, § 13. Approved and in effect March 16, 1937.]

COLLECTION OF CONTRIBUTIONS

3033.14. (a) Interest on past due contributions. Contributions unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of 1 per centum per month from and after such date until payment plus accrued interest is received by the commission. Interest collected pursuant to this subsection shall be paid into the unemployment compensation fund.

(b) **Collection — civil actions.** If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen's compensation law of this state.

(c) **Priorities under legal dissolutions or distribution of employer's assets.** In the event of any distribution of an employer's assets pursuant to an order of any court under the

laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than \$250.00 to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act, contributions then or thereafter due shall be entitled to priority of payment as a debt due the sovereign power as provided by the bankruptcy act of June 22, 1938 (Chap. 575-52 Stat. 840).

(d) **Refunds — time and manner of making.** If not later than three (3) years after the date on which any contributions or interest thereon became due, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commission shall determine that such contributions or interest or any portion thereof was erroneously collected, the commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made the commission shall refund said amount, without interest, from the fund. For like cause and within the same period adjustment or refund may be so made on the commission's own initiative. [L. '39, Ch. 137, § 5, amending L. '37, Ch. 137, § 14. Approved and in effect March 9, 1939.]

Section 9 repeals conflicting laws.

PROTECTION OF RIGHTS AND BENEFITS

3033.15. (a) Waiver of rights void — what agreements void — deductions from wages — penalty. Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this act shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this act from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by an individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not more than \$1,000 or be imprisoned for not more than six months, or both.

(b) **Limitation of fees—counsel or agent—approval of commission—violation—penalty.** No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the chairman of an appeal tribunal or the commission or its representatives or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the commission. Any person who violates any provision of this subsection shall, for each such offense, be fined not more than \$500, or imprisoned for not more than six months, or both.

(c) **No assignment of benefits—exemptions—execution—waiver.** Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this act shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with the other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse, or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void. [L. '37, Ch. 137, § 15. Approved and in effect March 16, 1937.]

PENALTIES

3033.16. False statements — violations — penalty — benefits wrongfully received (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, either for himself or for any other person, shall be punished by a fine of not more than \$500 or by imprisonment for not longer than thirty days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or

reduce any contribution or other payment required from an employing unit under this act, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not more than \$500 or by imprisonment for not longer than sixty days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall wilfully violate any provision of this act or any order, rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not more than \$500 or by imprisonment for not longer than sixty days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the commission, either be liable to have such sum deducted from any future benefits payable to him under this act or shall be liable to repay to the commission for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this act for the collection of past due contributions. [L. '37, Ch. 137, § 16. Approved and in effect March 16, 1937.]

REPRESENTATION IN COURT

3033.17. Attorneys — criminal prosecutions.

(a) In any civil action to enforce the provisions of this act the commission and the state may be represented by any qualified attorney who is employed by the commission and is designated by it for this purpose or at the commission's request, by the attorney general.

(b) All criminal actions for violation of any provision of this act, or of any rules or regulations issued pursuant [pursuant] thereto, shall be prosecuted by the attorney general of the state; or, at his request and under his

direction, by the prosecuting attorney of any county in which the employer has a place of business or the violator resides. [L. '37, Ch. 137, § 17. Approved and in effect March 16, 1937.]

NONLIABILITY OF STATE

3033.18. State liability limited to commission fund. Benefits shall be deemed to be due and payable under this act only to the extent provided in this act and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commission shall be liable for any amount in excess of such sums. [L. '37, Ch. 137, § 18. Approved and in effect March 16, 1937.]

DEFINITIONS

3033.19. Definitions as used in this act. As used in this act, unless the context clearly requires otherwise:

(a) (1) "Annual payroll", means the total amount of wages payable by an employer (regardless of the time of payment) for employment during a calendar year.

(2) "Average annual payroll", means the average of the annual payrolls of an employer for the last three or five preceding calendar years, which ever average is higher.

(b) "Benefits", means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

(c) "Base period", means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

(d) "Benefit year", with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the date of filing of a valid claim by said individual, and thereafter the fifty-two consecutive-week period beginning with the date of the next valid claim filed after the termination of his last preceding benefit year.

(e) "Calendar quarter", means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the commission may by regulation prescribe.

(f) "Commission", means the unemployment compensation commission established by this act.

(g) "Contributions", means the money payments to the state unemployment compensation fund required by this act.

(h) "Employing unit", means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(i) "Employer" means:

(1) Any employing unit which for some portion of a day in each of 20 different weeks, whether or not such weeks are or were consecutive within either the current or the preceding calendar year, has or had in employment, one or more individuals (irrespective of whether the same individuals are or were employed in each such day); and whose total annual pay roll within either the current or the preceding calendar year, exceeds the sum of five hundred dollars (\$500.00).

(2) Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this act) and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which, having become an employer under paragraph (1), (2) or (3) has not, under section 8 [3033.8], ceased to be an employer subject to this act; or

(5) For the effective period of its election pursuant to section 8 [3033.8] (c) any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" subject to other provisions of this subsection means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(A) The service is localized in this state; or

(B) The service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this state and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4) Service shall be deemed to be localized within a state if—

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the commission that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) The term "employment" shall not include:

(A) Agricultural labor;

(B) Domestic service in a private home;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(E) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(F) Service performed in the employ of this state, or of any political subdivision thereof, or of any instrumentality of this state or its political subdivisions;

(G) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States.

(H) Service with respect to which unemployment compensation is payable under and unemployment compensation system established by an act of congress; provided, that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner in section 11 [3033.11] (b) of this act for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this act.

(k) "Employment office", means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

(L) "Fund", means the unemployment compensation fund established by this act, to

which all contributions required and from which all benefits provided under this act shall be paid.

(m) "Total unemployment";

(1) An individual shall be deemed "totally unemployed" in any week during which he performs no services and with respect to which no wages are payable to him.

(2) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe.

(3) As used in this subsection the term "wages" shall include only that part of remuneration for odd jobs or subsidiary work, or both, which is in excess of five dollars (\$5.00) in any one week, and the term "services" shall not include that part of odd jobs or subsidiary work, or both, for which remuneration equal to or less than five dollars (\$5.00) per week is payable.

(n) "State" includes, in addition the states of the United States of America, Alaska, Hawaii, and the District of Columbia.

(o) "Week", means such period of seven consecutive calendar days, as the commission may by regulations prescribe.

(p) "Unemployment compensation administration fund", means the unemployment compensation administration fund established by this act, from which administration expenses under this act shall be paid.

(q) "Wages", means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the commission.

(r) "Weekly benefit amount". An individual's "weekly benefit amount", means the amount of benefits he would be entitled to receive for one week of total unemployment. [L. '39, Ch. 137, § 6, amending L. '37, Ch. 137, § 19. Approved and in effect March 9, 1939.

Section 9 repeals conflicting laws.

SAVING CLAUSE

3033.20. Enacting reservations. The legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts done pursuant thereto shall exist subject to the power of the legislature

to amend or repeal this act at any time. [L. '37, Ch. 137, § 20. Approved and in effect March 16, 1937.

3033.21. Partial invalidity saving clause—emergency declaration. If any section, subsection, sentence, clause, or a phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly declares that it would have passed this act and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared unconstitutional, the same being necessary to the welfare of the state of Montana, and the political subdivisions thereof by reason of the existence of an extraordinary emergency. [L. '37, Ch. 137, § 21. Approved and in effect March 16, 1937.

3033.22. Act to be in effect—expiry. If Title III or Title IX of the "federal social security act" is declared unconstitutional, or in any way becomes inoperative, then this act shall terminate and cease and have no force and effect as of the date when said title or titles of said act is declared unconstitutional, or becomes inoperative. [L. '37, Ch. 137, § 22. Approved and in effect March 16, 1937.

3033.23. Approval by social security board. If the federal social security board shall fail to approve this act, the same shall immediately terminate and have no force and effect. [L. '37, Ch. 137, § 23. Approved and in effect March 16, 1937.

3033.24. Effective date. The legislature hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health and safety; that an emergency exists, and that this act, therefore, shall take effect and be in force from and after its passage and approval. [L. '37, Ch. 137, § 24. Approved and in effect March 16, 1937.

CHAPTER 256B

PUBLIC WORKS EMERGENCY RELIEF

Section

- 3033.25. Public works emergency relief—declaration of existence of emergency—public policy.
- 3033.26. Public works—state subdivisions to undertake—time limit—projects authorized.
- 3033.27. Governing boards—powers enumerated.
- 3033.28. When emergency over—no more loans to be made.

Section

- 3033.29. Taxation — election — necessity — governing board—borrowing money—resolution — contents — election — registration—clerk's duties — procedure—sale of bonds.
- 3033.30. Prior proceedings—validation.
- 3033.31. Bond proceedings—general laws—applicability.
- 3033.32. Partial invalidity of act—effect.
- 3033.33. Public necessity for act—declaration.
- 3033.34. Expiry of act—purpose—repeals.

3033.25. Public works emergency relief — declaration of existence of emergency — public policy. The economic depression prevailing throughout the United States and foreign countries has caused widespread unemployment, poverty, dependency and distress among people in the state of Montana, and to such extent that the public peace, order and tranquillity are seriously endangered, and the orderly processes of government may be imperiled. Local, state and federal means for relief so far made available are hopelessly inadequate. The entire situation constitutes a grave emergency in the history of our state. This emergency is hereby recognized and declared to exist.

In accordance with the fundamental principles and purposes of the government of this nation and of this state, we hereby declare it to be the policy of this legislative assembly to meet the existing emergency by providing public work for unemployed and distressed people throughout the state and thereby “insure domestic tranquillity and promote the general welfare”. [L. '37, Ch. 115, § 1. Approved and in effect March 15, 1937.

3033.26. Public works — state subdivisions to undertake — time limit — projects authorized. To effectuate the purposes of this act, counties, cities, towns, rural improvement districts, school districts, irrigation districts, drainage districts, sewerage districts, federal reclamation projects and water users' boards of control thereof, and other political subdivisions and governmental agencies of this state, are hereby authorized until March 15, 1941, to undertake a program of public works which may include, among other things the following:

(1) The construction, repair and improvement of public highways, school houses, county and district high schools, public parks and parkways, public buildings and any other publicly owned instrumentalities and facilities;

(2) The control, utilization and purification of water and extension and improvement of existing municipal water works;

(3) Or procuring a supply of water for a municipality which shall or hereafter, own and control such water supply and devote the

revenues derived therefrom to the payment of the debt;

(d) The construction, reconstruction, alteration or repair, under public regulation or control, of low cost housing and slum clearance projects;

(5) The construction of any other projects of any character eligible for loans under the provisions of the acts of congress, known as the emergency relief and construction act of 1932, the national industrial recovery act and any other acts amendatory of, or supplementary to, such acts. [L. '39, Ch. 111, § 1. Approved and in effect March 3, 1939. Amending L. '37, Ch. 115, § 2.

3033.27. Governing boards — powers enumerated. With a view of increasing employment quickly the boards of county commissioners, city and town councils, boards of trustees of school districts of governmental subdivisions, and agencies mentioned in this act are authorized and empowered; (1) to construct, finance, or aid in the construction or financing of any public works project included in the program undertaken pursuant to section 2 [3033.26], of this act; (2) upon such terms as the president of the United States shall prescribe and pursuant to the national industrial recovery act or other legislation of the United States and any laws of this state, to make loans, convey real property and accept grants for the construction, repair or improvement of any such projects; (3) to sell any real or personal property to the federal government in connection with the construction of any such project and to buy therefrom any property so constructed or to lease for any period not to exceed forty (40) years any such project therefrom, with or without the privilege of purchase, and any such contract or lease shall not be deemed the incurring of any indebtedness within the terms of the constitution of this state; (4) to accept grants for any such projects; (5) to make and enter into any contracts with the federal government or any governmental agency aforementioned and to borrow money, issue bonds, debentures or certificates of indebtedness with respect thereto; (6) or to contract for the construction of any project to be paid for solely from the earnings of said project and without liability on the part of the governmental subdivision or agency contracting for the construction of same; and to levy taxes, divert funds or to amortize the indebtedness; notwithstanding any statutory restrictions or limitations on the right or power of such county, municipal corporation or other agency described herein. [L. '37, Ch. 115, § 3. Approved and in effect March 15, 1937.

3033.28. When emergency over — no more loans to be made. Whenever in the opinion of the governor the emergency herein declared to exist shall have been ended, no further loans may be made under the provisions of this act. [L. '37, Ch. 115, § 4. Approved and in effect March 15, 1937.]

3033.29. Taxation — election — necessity — governing board — borrowing money — resolution — contents — election — registration — clerk's duties — procedure — sale of bonds.

(a) No lease or contract shall be entered into and no debt or liability shall be incurred or created under the provisions of this act on the part of any county, city, town, school district, public or municipal corporation, political subdivision or governmental agency, for the payment of any part of which taxes will be levied against the taxable property therein, without the approval of a majority of the qualified electors thereof whose names appear upon the last preceding assessment roll, voting at an election called for such purpose.

(b) The council, commission, board of directors, board of trustees or governing board of any county, city, town, school district, public or municipal corporation, or other political subdivision or governmental agency of this state, desiring to make a loan and to issue its bonds for any purpose or purposes set forth in this act, shall at any regular meeting thereof or at any special meeting called for such purpose, adopt a resolution which shall set forth the following:

(1) The full amount required to be expended for any such purpose or purposes;

(2) The amount of the loan to be made therefor;

(3) The term over which bonds evidencing such indebtedness will extend. And said resolution shall call an election at which the question of making such loan and issuing such bonds shall be submitted to the qualified registered electors of the county, city, town, school district, public or municipal corporation, or political subdivision which is to make such loan and issue such bonds, who are taxpayers and whose names appear upon the last completed assessment roll, and fix a date for holding such election, which shall not be less than twenty (20) nor more than twenty-five (25) days from the date of the adoption of such resolution; provided such resolution may be adopted and said election called without any petition having been presented or filed asking that the same be held. Said resolution shall be entered in full in the minutes of the board or commission, and shall show the vote by ayes and nays thereon.

A copy of such resolution certified by the clerk of the board or commission shall be immediately delivered to the county clerk and said county clerk shall thereupon close the registration books for said election at twelve (12:00) o'clock noon of the fifteenth (15) day prior to the date fixed in such resolution for holding such election, and it shall not be necessary for the county clerk to post or publish any notice of the closing of the registration books. After the closing of the registration books for such election, the county clerk shall promptly prepare lists of the registered electors who are taxpayers and whose names appear on the last completed assessment roll for state, county and school taxes and who are entitled to vote at such election, and shall prepare poll books for such election as provided in section 568, revised codes of Montana of 1935, as amended, and deliver the same to the judges of election prior to the opening of the polls for such election; provided that it shall not be necessary for the county clerk to have the aforesaid lists of registered electors either printed or posted.

(c) The clerk of the board calling such election shall, at least twenty (20) days prior to the date when such election is to be held, post, or cause to be posted copies of said resolution in not less than three (3) public places in each voting precinct, and the posting of such copies shall take the place of, and be in lieu of, the publication of notice of election and posting notices of election required by the general election laws.

Ballots for said election shall be prepared by the clerk of the board calling such election and delivered by such clerk to the judges of election, and said election shall be held and conducted, votes counted and returns made and canvassed in the manner required by the general election laws, and all provisions of such general election laws shall apply thereto, as far as the same are applicable and not in conflict with any of the provisions of this act.

No bonds or other evidences of indebtedness shall be sold for less than their par value with accrued interest to date of sale, and when sold to agencies of the United States may be sold without publication of notice of sale. [L. '37, Ch. 115, § 5. Approved and in effect March 15, 1937.]

3033.30. Prior proceedings — validation.

Where proceedings have been commenced prior to the enactment of this chapter which would have been authorized under this law for the purposes described herein, such proceeding shall be held valid and sufficient, and

shall authorize the completion of such proceedings under this law; and said proceedings, when so completed, shall be of the same force and effect as if this law had been in effect when said proceedings were so commenced. [L. '37, Ch. 115, § 6. Approved and in effect March 15, 1937.]

3033.31. Bond proceedings — general laws — applicability. All of the laws of this state governing the issuance and sale of bonds by counties, cities, towns, school districts, and other subdivisions of the state authorized to issue bonds under this act, the levying of taxes for the payment of principal and interest thereof and payment and redemption thereof, insofar as the same are applicable and not in conflict with any of the provisions of this act, shall apply to and govern all bonds issued under the provisions of this act. [L. '37, Ch. 115, § 7. Approved and in effect March 15, 1937.]

3033.32. Partial invalidity of act — effect. If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional. [L. '37, Ch. 115, § 8. Approved and in effect March 15, 1937.]

3033.33. Public necessity for act — declaration. The legislative assembly hereby finds, determines and declares this act to be necessary for the immediate preservation of the public peace, health and safety. [L. '37, Ch. 115, § 9. Approved and in effect March 15, 1937.]

3033.34. Expiry of act — purpose — repeals. An emergency exists and this act shall take effect and have force from and after its passage; but this act shall expire and stand repealed on March 15, 1941. This act shall not repeal any statute now in force nor prevent the exercise of powers as elsewhere in the statutes of this state provided. It shall constitute an additional method of carrying out the powers herein authorized. [L. '39, Ch. 111, § 2. Approved and in effect March 3, 1939. Amending L. '37, Ch. 115, § 10.]

CHAPTER 263

HOURS OF LABOR

Section

- 3083.6. Restaurants and other eating establishments — day's and week's work — limitation — arrangement of hours of work — exception.
- 3083.7. Same — violation of act — penalty.

3073.1 Hours of labor in retail stores — application of provisions.

1938.✓ The courts may take judicial notice of current economic conditions in passing on the validity of statutes regulating maximum hours of labor. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938.✓ While Const. Art. 18, § 4, as amended in 1936, is without controlling effect upon the constitutionality of 3073.1, enacted prior thereto, it is of some significance in the sense that it served to disclose the existence of a public purpose or policy of the state relating to the hours of labor. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938.✓ In determining the constitutionality of a statute every possible presumption must be indulged in favor of its validity. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938.✓ The objection that section 3073.1 is unconstitutional because there was no legitimate object in it justifying the exercise of the police power, and no reasonable relation to the health of those within the purview of the statute, was held untenable in the absence of facts before the court supporting the contention and the fact that the people of the state later voiced their approval of fixing the hours of labor by later adopting a constitutional amendment to that effect. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938.✓ Section 3073.1 was passed by the legislature in the exercise of the sovereign police powers inherent in state governments, and its manifest intent was to make eight hours a regular day's labor for employees in retail stores and certain kindred occupations in some cities, although no one can say positively whether it was passed in an attempt to adjust unemployment by creating more jobs, to promote health, or whether it was simply for the general prosperity and welfare of the state as a whole, or a combination of these objects. Just what was the object the court was not called upon to decide so long as any of the purposes might reasonably have been accomplished by the act. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938.✓ Section 3073.1 is not invalid on account of indefiniteness as to its enforcement. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938.✓ Section 3073.1 is constitutional. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938.✓ In legislating upon such matters as are involved in section 3073.1 the legislature has the right to consider that its minimum wage requirements would be an important aid in carrying out its policy of protecting labor. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938.✓ Section 3073.1 is not invalid because of unjustified classification in regard to cities to which the statute applies. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1937. Prosecution for violation of this section dismissed in the supreme court on motion of the state for insufficiency of information. *State v. Pemberton*, 103 Mont. 620, 66 P. (2d) 788.

3074. Hours of telephone operators.

1939. Where full record was not certified on appeal in action for wages, supreme court refused to adjudge \$500 excessive allowance for attorney fees where it had no means of determining amount of time required to prepare case of time consumed in trial. *Britt v. Cotter Butte Mines, Inc.*, Mont., 89 P. (2d) 266.

3083.6. Restaurants and other eating establishments—day's and week's work—limitation—arrangement of hours of work—exception. A period of not more than eight (8) hours shall constitute a day's work, and a period of not to exceed forty-eight (48) hours shall constitute a week's work for persons employed in or about restaurants, cafes, lunch counters and other commercial eating establishments.

The hours of work must be so arranged that persons employed in or about restaurants, cafes, lunch counters and other commercial eating establishments shall not be on duty more than eight (8) hours in the aggregate of any twelve (12) consecutive hours, such persons shall have at least twelve (12) consecutive hours off duty; provided, however, that the provisions of this act shall not apply to any person or persons working more than eight (8) hours during any twelve (12) consecutive hours, or more than forty-eight (48) hours during any week for the purpose of relieving another employee in case of sickness, or where the health of the public is imperiled, or where life and property is in imminent danger, or for other unforeseen cause or causes. [L. '39, Ch. 199, § 1. Approved and in effect March 17, 1939.]

Section 3 repeals conflicting laws.

3083.7. Same—violation of act—penalty. Any person, corporation, manager, agent or employer who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00), or by imprisonment in the county jail for not less than fifteen (15) days nor more than sixty (60) days, or by both such fine and imprisonment. [L. '39, Ch. 199, § 2. Approved and in effect March 17, 1939.]

Section 3 repeals conflicting laws.

CHAPTER 264

PAYMENT OF WAGES—PROTECTION OF DISCHARGED EMPLOYEES

3084. Semi-monthly payment of wages.

1939. ✓ In action for wages the supreme court presumed that employee rendered services of the nature alleged in the complaint and admitted in answer where the jury found that he performed services for the defendant. *Britt v. Cotter Butte Mines, Inc.*, Mont., 89 P. (2d) 266.

1939. ✓ A mine watchman, messenger, and repairman held to perform "labor" within the meaning of this section. *Britt v. Cotter Butte Mines, Inc.*, Mont., 89 P. (2d) 266.

1939. ✓ Under this section attorney's fees are recoverable whether suit is on quantum meruit or agreement for fixed wages. *Britt v. Cotter Butte Mines, Inc.*, Mont., 89 P. (2d) 266.

1938. Services performed at day wages in working as blacksmith, stull and timber cutting, and stull and timber camp foreman were held within section 3084 in the absence of evidence to the contrary, in *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643, although set out for the first time in the record in the memorandum of costs and subsequently in the bill of exceptions to the court's ruling with regard to costs.

1935. ✓ Sections 3084-3089, laws of 1919, chapter 11, are, in effect, an amendment of or addition to section 9802, and a general ranch hand comes within the exception and not within the provisions of the act, and not entitled to recover an attorney's fee as a part of his costs in suit for wages. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

3085. Penalty for failure to pay at times specified in law.

1938. ✓ The penalty of 5 per cent provided by sections 3085 and 3087 in case suit is brought within six months does not furnish any reasonable ground for assuming that an attorney's fee cannot be collected after six months or that the provision therefor is in any way weakened by the existence of the penalty provision. However section 3089 is clearly meant to apply, not only to a case brought within the six month period, but as well to one brought after that period. It is reciprocal and contemplates the possibility of a judgment against an employee, and very properly provides that "the successful party" might recover an attorney's fee. *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643.

3087. Period within which employee may recover penalties.

1938. ✓ The penalty of 5 per cent provided by sections 3085 and 3087 in case suit is brought within six months does not furnish any reasonable ground for assuming that an attorney's fee cannot be collected after six months or that the provision therefor is in any way weakened by the existence of the penalty provision. However section 3089 is clearly meant to apply, not only to a case brought within the six month period, but as well to one brought after that period. It is reciprocal and contemplates the possibility of a judgment against an employee, and very properly provides that "the successful party" might recover an attorney's fee. *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643.

3089. Judgment for wages shall include attorney's fee.

1939. ✓ Where full record was not certified on appeal in action for wages, supreme court refused to adjudge \$500 excessive allowance for attorney fees where it had no means of determining amount of time required to prepare case or time consumed in trial. *Britt v. Cotter Butte Mines, Inc.*, Mont., 89 P. (2d) 266.

1939. ✓ The right to include a reasonable attorney's fee in the cost bill where an employee is forced to bring suit to recover wages due is statutory. *Meister v. Farrow et al.*, *Cochise Rock Drill Mfg. Co. v. Groff et al.*, Mont., 92 P. (2d) 753.

1939. ✓ Under this section attorney's fees are recoverable whether suit is on quantum meruit or agreement for fixed wages. *Britt v. Cotter Butte Mines, Inc.*, Mont., 89 P. (2d) 266.

1939. ✓ A mine watchman, messenger, and repairman held to perform "labor" within the meaning of this section. *Britt v. Cotter Butte Mines, Inc.*, Mont. 89 P. (2d) 266.

1939. ✓ This section does not violate Const. Art. 3, § 27. *Britt v. Cotter Butte Mines, Inc.*, Mont. 89 P. (2d) 266.

1938. ✓ An action for wages against administrator of estate held "necessary" within section 3089, as against his claim that he had no alternative but allow the claim, since he could allow it in part or refer the matter to disinterested persons to be approved by the court or judge. *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643.

1938. ✓ The provision of section 3089 allowing a reasonable attorney's fee as part of the costs constitutes "an express provision of law," such as was anticipated by section 9802. *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643.

1938. ✓ In an action by a wage earner against an administrator for services rendered the deceased, attorney's fees were properly allowed as costs despite the fact that the services were rendered to the deceased and not to the administrator, in view of section 9795, which allows costs against an administrator the same as against a person defending in his own right. *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643.

1938. ✓ The penalty of 5 per cent provided by sections 3085 and 3087 in case suit is brought within six months does not furnish any reasonable ground for assuming that an attorney's fee cannot be collected after six months or that the provision therefore is in any way weakened by the existence of the penalty provision. However section 3089 is clearly meant to apply, not only to a case brought within the six month period, but as well to one brought after that period. It is reciprocal and contemplates the possibility of a judgment against an employee, and very properly provides that "the successful party" might recover an attorney's fee. *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643.

1938. ✓ Services performed at day wages in working as blacksmith, stull and timber cutting, and stull and timber camp foreman were held within section 3084 in the absence of evidence to the contrary, in *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643, although set out for the first time in the record in the memorandum of costs and subsequently in the bill of exceptions to the court's ruling with regard to costs.

1935. ✓ Sections 3084-3089, laws of 1919, chapter 11, are, in effect, an amendment of or addition to section 9802, and a general ranch hand comes within the exception and not within the provisions of the act, and not entitled to recover an attorney's fee as a part of his costs in suit for wages. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

Section

- 3094.4. Violations of act—commissioner's report to county attorney—county attorney's duty
- 3094.5. District court proceedings.
- 3094.6. Hearing and decree—restraining order—employer's surety bond—when not required.
- 3094.7. Process—service.
- 3094.8. Further operations—injunction—duty of county attorney.
- 3094.9. Employer—contempt of court—punishment.
- 3094.10. Employer's bond—notice to furnish—publication.
- 3094.11. Failure to pay wages—suit—attorney's fee—assessment.
- 3094.12. Review by supreme court.
- 3094.13. Remedy of act cumulative.

3094.1. Chapter 264 extended to this act — persons to whom act is applicable. For the purposes of this act, all the provisions of chapter 264, political code of the revised codes of Montana, 1935, shall extend to and govern every person, firm, partnership or corporation engaged in the business of extracting, or of extracting and refining or reducing metals and minerals, or mining for coal, or drilling for oil, save and except such persons, firms, partnerships or corporations as have a free and unencumbered title to not less than one-half ($\frac{1}{2}$) the fee of the property being worked; for this purpose outstanding unpaid or unredeemed tax sales certificate shall not be considered an encumbrance. [L. '39, Ch. 39, § 1. Approved and in effect February 21, 1939.

3094.2. Operators — verified statement — contents — filing with commissioner of labor. Every person, firm or partnership coming within the provisions of this act shall before commencing operations, file with the commissioner of labor of the state of Montana and also in the office of the county clerk and recorder of each county where such operations are to be carried on, a verified statement showing the names and addresses of each party interested therein, or, if a corporation, the names and addresses of its officers and directors, the principal place of business of such corporation and the names and addresses of the person, or persons, resident of Montana, designated as the person, or persons, upon whom service of process may be made. [L. '39, Ch. 39, § 2. Approved and in effect February 21, 1939.

3094.3. Operator's statement — failure to file — penalty. Every person, firm, partnership or corporation failing to file a statement with the commissioner of labor and in the offices of the county clerks and recorders, as provided in section 2 [3094.2] of this act shall be deemed guilty of a misdemeanor and pun-

CHAPTER 264A

SECURITY FOR PAYMENT OF WAGES — METAL AND MINE WORKERS

Section

- 3094.1. Chapter 264 extended to this act—persons to whom act is applicable.
- 3094.2. Operators—verified statement—contents—filing with commissioner of labor.
- 3094.3. Operator's statement—failure to file—penalty.

ishable as provided by law. [L. '39, Ch. 39, § 3. Approved and in effect February 21, 1939.

3094.4. Violations of act — commissioner's report to county attorney — county attorney's duty. Whenever it shall appear from reliable information satisfactory to the commissioner of labor of the state of Montana that any person, firm, partnership or corporation engaged in the business mentioned in section 1 [3094.1] hereof, and not exempt from the effect of this act, shall have failed to pay any wages or salaries due his employees as required by chapter 264 of the political code of the revised codes of Montana for 1935, he shall have the right to deliver such information to the county attorney of the county wherein the operations of the employer are being carried on and to request such county attorney to file a complaint in the district court of said county in accordance with the provisions of this act and said chapter 264. Should such complaint be filed by the county attorney upon his own motion, or at said request of said commissioner of labor, the same shall pray that relief be had against the employer for the greater security for the payment of salaries and wages of the employees; provided, however, that any such employees may make complaint direct to the county attorney relative to any violation of this act or of said chapter 264. If said county attorney believes, after receiving said information, that the provisions of chapter 264 of the revised codes of Montana for 1935, or any thereof, have been violated, and that such violation or violations of said chapter was or were wilful, or that the financial condition of the employer is such as to endanger employees in receiving prompt payment or collection of wages, it shall be his duty to file the complaint aforesaid in said district court. The county attorney of the county shall promptly notify the commissioner of labor of any complaint made by any employee relative to the violation of any of the provisions of this act or said chapter 264, and shall in writing keep said commissioner of labor advised of each step in any proceeding taken by said county attorney thereunder. Upon the filing of such complaint, summons shall issue thereon and a copy of such complaint and a copy of the summons shall be served upon the employer who shall have ten (10) days after such service to appear and defend such action. All proceedings upon such complaint shall be promptly prosecuted. [L. '39, Ch. 39, § 4. Approved and in effect February 21, 1939.

3094.5. District court proceedings. Upon the conclusion of the hearing upon such com-

plaint, the judge of the district court may make findings and shall issue an order to the employer in default to pay within five (5) days all wages and salaries found by the court to be due and unpaid; or an order to appear before the court within ten (10) days and show cause why a judgment and order should not issue requiring said employer to give bond for the payment of all wages and salaries then due and thereafter to accrue to his employees within said county. Service of such order shall be made at least five (5) days before the date set for hearing or the date to which such hearing may be continued by the court upon good cause shown. [L. '39, Ch. 39, § 5. Approved and in effect February 21, 1939.

3094.6. Hearing and decree — restraining order — employer's surety bond — when not required. Upon the hearing of such order, if the court shall determine that the default of said employer in the payment of wages and salaries was wilful, or that the financial condition of the employer is such as to endanger or delay or impede employees in collecting their wages and salaries, or that the employer is a non-resident of the state of Montana without visible property in said county subject to execution, or who has within two (2) years defaulted in payroll payments, the court may adjudge and decree that the employee or employees are endangered in the collection of their just demands, and the court may issue a restraining order against the employer forbidding further prosecution of operations by said employer until after the employer has furnished a good and sufficient bond, in form to be approved by the court with good and sufficient surety or sureties who can and do legally justify, and deposit said bond with the clerk of court of said county, obligating the employer to pay all wages and salaries as required by said chapter 264. Said bond may be that of a surety company licensed and authorized to do business within the state of Montana, or of two (2) owners of real estate situate in said county and who can and do justify as sureties in the same manner as sureties justify on appeal bonds or bail bonds. Said bond shall be in the sum of not less than five hundred dollars (\$500.00) for each unit of five (5) men or less employed by such person, firm, partnership, or corporation. Any person whose wages or salary has remained unpaid for fifteen (15) days or more after due, shall have a right to sue upon said bond for the recovery of his wages or salary. Said bond shall continue in force for one (1) year. Said bond shall run in the name of the state of Montana and shall be examined and approved by the judge of the district court, said

approval to be endorsed thereon; provided, however, that nothing contained in this act shall be considered as requiring any person, firm, partnership or corporation to file a bond or bonds if he or it pays for all labor in full each day, or where such labor has been performed upon a written building or construction contract to furnish material or other consideration as well as labor; provided, however, that nothing herein shall prohibit the making or entering into of any wage or working agreement, such as grubstake agreements and/or similar agreements; provided such employer or contractor keeps in force proper workmen's compensation insurance. [L. '39, Ch. 39, § 6. Approved and in effect February 21, 1939.

3094.7. Process — service. All orders and other process provided for in this act shall be served by the sheriff upon the employer in the same manner as a summons in a civil suit is served; service upon any partner or member of any firm shall be considered service upon each partner and each member of the firm. In the event that the employer is a non-resident, or a corporation without officers or directors within the county, who cannot conveniently and promptly be found for service, then service upon the manager, superintendent or foreman in charge of the work, or, there being none such, then posting a copy of the order, or other process provided to be served herein, in a conspicuous place at or near the entrance to the principal workings shall be deemed sufficient service. [L. '39, Ch. 39, § 7. Approved and in effect February 21, 1939.

3094.8. Further operations — injunction — duty of county attorney. In the event that the bond ordered by the district court is not executed and filed with the county treasurer within the time fixed by the court, the court may, if he deems the persons working for such employer to be insecure in the prompt payment or collection of their wages or salaries, enjoin any and all further operations of said employer within the state of Montana, for a period of one (1) year, at any mine or reduction works, or oil well or until the order, judgment or decree of the court shall have been fully complied with. The said district court shall include in any order, judgment or decree against the employer, all costs of the proceeding, which shall be taxed against the employer and paid into the clerk of the court to be by him deposited with the county treasurer to the credit of the general fund of the county. The county attorney of the county wherein such proceedings are had, or the attorney general of the state, shall, at his or their dis-

cretion, file such action and prosecute the same. [L. '39, Ch. 39, § 8. Approved and in effect February 21, 1939.

3094.9. Employer — contempt of court — punishment. In event the employer fails for thirty (30) days or more to pay the costs of the proceeding and/or fails to furnish the bond required by the court, the court may proceed against and punish said employer for contempt of court. [L. '39, Ch. 39, § 9. Approved and in effect February 21, 1939.

3094.10. Employer's bond — notice to furnish — publication. In the discretion of the court, it may order the clerk of the court to publish a brief notice or memorandum in a newspaper published in the county, of the entry of the order against the employer, requiring said employer to furnish said bond, said publication shall be for four (4) consecutive weeks. The cost of such publication shall be assessed against the employer as one of the costs of the proceeding. [L. '39, Ch. 39, § 10. Approved and in effect February 21, 1939.

3094.11. Failure to pay wages — suit — attorney's fee — assessment. In event any person whose wages or salary has remained unpaid for fifteen (15) days or more after due, shall bring suit as in section 6 [3094.6] provided, the court shall assess as costs against the unsuccessful party a reasonable attorney fee. [L. '39, Ch. 39, § 11. Approved and in effect February 21, 1939.

3094.12. Review by supreme court. In event any employer against whom an order to furnish the bond described in this act feels aggrieved by any order or injunction of the district court, he shall be entitled, upon payment for the transcript of record, to have his objections and exceptions reviewed and determined by the supreme court as upon a writ of certiorari. [L. '39, Ch. 39, § 12. Approved and in effect February 21, 1939.

3094.13. Remedy of act cumulative. The remedy herein provided for the greater security for the payment of wages and salaries and the collection thereof, shall be in addition to any remedy now provided by law for the payment and collection of wages and salaries. [L. '39, Ch. 39, § 13. Approved and in effect February 21, 1939.

Section 14 is partial invalidity saving clause.

CHAPTER 267

MEDICINE—REGULATION OF PRACTICE

3122. Practicing medicine without certificate — penalties.

1937. ✓ The exclusive jurisdiction of a prosecution of one practicing medicine or surgery without a license is in the district court, and not in the justice court, in view of the fact that the maximum penalty in the latter court is a \$500 fine and imprisonment for six months, while the maximum penalty for the above offense is a fine of \$1,000 and imprisonment for one year. State ex rel. Freebourn v. District Court, 105 Mont. 77, 69 P. (2d) 748.

CHAPTER 268

OSTEOPATHY—REGULATION OF PRACTICE

3130. Certificate does not authorize the practice of major or operative surgery.

1937. ✓ An osteopath who prescribes or uses drugs in the practice of osteopathy, or who performs major or operative surgery, is practicing contrary to the provisions of the act regulating the practice of osteopathy within the meaning of section 3132, and since that section prescribes a penalty for all violations of the statutes regulating the practice of osteopathy, of which section 3130 is a part, section 10725 has no application to a prosecution under section 3130. State ex rel. Freebourn v. District Court, 105 Mont. 77, 69 P. (2d) 748.

3132. Practice of osteopathy without license prohibited.

1937. ✓ An osteopath who prescribes or uses drugs in the practice of osteopathy, or who performs major or operative surgery, is practicing contrary to the provisions of the act regulating the practice of osteopathy within the meaning of section 3132, and since that section prescribes a penalty for all violations of the statutes regulating the practice of osteopathy, of which section 3130 is a part, section 10725 has no application to a prosecution under section 3130. State ex rel. Freebourn v. District Court, 105 Mont. 77, 69 P. (2d) 748.

CHAPTER 270

PODIATRY—REGULATION OF PRACTICE

Section

- 3154.1. Definitions.
- 3154.2. License — acts forbidden — amputations — general anesthetics.
- 3154.3. Chiropody examiners—creation of board—personnel — appointment — terms — vacancies—filling — examinations—qualifications — schools — fees— non-resident practitioners.
- 3154.4. Examination—fees—subjects.
- 3154.5. Designation of licensees — renewals of licenses — fees — re-issuance — display —recording.
- 3154.6. Refusal or revocation of license—re-issue.
- 3154.10. Application of act.
- 3154.11. To what acts statute not applicable—fitting of corrective shoes, arch supports, etc.

3154.1. Definitions. Chiropody (sometimes called podiatry) shall, for the purpose of this act, mean the diagnosis, medical, surgical, mechanical, manipulative and electrical treat-

ment of ailments of the human foot. A chiropodist shall mean one practicing chiropody. [L. '39, Ch. 218, § 1, amending R. C. M. 1935, § 3154.1. Approved March 17, 1939.

Section 9 repeals conflicting laws.

3154.2. License — acts forbidden — amputations — general anesthetics. It shall be unlawful for any person to profess to be a chiropodist, to practice or assume the duties incident to chiropody, or to advertise in any form or hold himself out to the public as a chiropodist or podiatrist, or in any sign or advertisement to use the word chiropodist or podiatrist, foot correctionist, or any other term or terms, letters indicating to the public that they are holding themselves out as a chiropodist, or foot correctionist in any manner as defined in this act, without first obtaining from the state board of chiropody medical examiners a license authorizing the practice of chiropody in this state, except as hereinafter provided. No chiropodist shall amputate the human foot or toe or toes, or administer any anesthetic other than local. [L. '39, Ch. 218, § 2, amending R. C. M. 1935, § 3154.2. Approved March 17, 1939.

Section 9 repeals conflicting laws.

3154.3. Chiropody examiners — creation of board — personnel — appointment — terms — vacancies — filling — examinations — qualifications — schools — fees — non-resident practitioners. There is hereby created a state board of chiropody medical examiners consisting of one physician to be selected at its annual meeting by the state board of medical examiners from its membership, the secretary of the state board of medical examiners, and two chiropodists to be selected and to serve as hereinafter provided. The Montana association of chiropodists shall select six chiropodists from its membership, who shall be residents of and shall have engaged in the active practice of chiropody for at least two years in this state, and shall be of high integrity and ability. Within thirty days from and after the selection of said six chiropodists as aforesaid, the governor of Montana shall appoint three of their number and so designate the term of office of each, that the term of office of one member shall expire in one (1) year, one in two (2) years, and one in three (3) years, from date of appointment; annually thereafter, the governor shall appoint one member who shall be a licensed chiropodist possessing the qualifications hereinbefore mentioned who shall serve for a period of three (3) years or until his successor shall have been appointed by the governor. Should any vacancy arise on aforesaid board before the expiration of the term of office of any of the

chiropractor members of said board, such vacancy shall be filled by appointment by the governor within thirty days, such appointee to possess the qualifications heretofore stated, and to be selected from those remaining of the said six chiropractors theretofore selected by the Montana association of chiropractors unless said number of selected chiropractors shall have been exhausted. Examinations shall be held semi-annually at such places and time as the state board of chiropractic medical examiners shall direct. On and after the date of the taking effect of this act, all persons who may wish to begin practice of chiropractic in this state, shall make application upon a blank form authorized and furnished by said state board of medical examiners, for a license to practice chiropractic. This application shall be granted to such applicants, after they shall have furnished satisfactory proof of being at least twenty-one (21) years of age, of good moral character, of having attained high school graduation or its equivalent and of having had at least two years of instruction in an accredited school of chiropractic recognized as being in good standing by the Montana board of chiropractic medical examiners, but after June 1st, 1941, no school of chiropractic shall be accredited by said board which does not require for graduation four years of instruction in the study of chiropractic. However, all chiropractors, actively engaged in the practice of chiropractic one or more years, and licensed by the state board of medical examiners, prior to April 1st, 1939, whether meeting these requirements or not, shall, upon furnishing proof thereof to said board of chiropractic medical examiners be entitled to a license without examination. A license without written examination may be issued to chiropractors of other states maintaining equal statutory requirements for the practice of chiropractic and extending the same reciprocal privilege to this state provided further that they have had a valid license for at least two years in that state prior to filing for reciprocal privilege, and by payment of fifty dollars (\$50.00) to the state medical board fund. [L. '39, Ch. 218, § 3, amending R. C. M. 1935, § 3154.3. Approved March 17, 1939.

Section 9 repeals conflicting laws.

3154.4 Examination — fees — subjects.

From and after the passage and approval of this act, any person not exempt from examination under section 3154.3 and desiring a license to practice chiropractic shall be examined in the following subjects: Anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutics, clinical and orthopedic chiropractic, histology, bacteriology, pharmacy, neurology, surgery

(minor), chiropractic, foot orthopedics, shoe therapy, physiotherapy, roentgenology, hygiene, and sanitation, ethics and culture, limited in their scope to the treatment of the human foot, and, if qualified, shall receive a license. The minimum requirements for a license shall be a general average of seventy-five per cent (75%) in all the subjects involved, and not less than fifty per cent (50%) in any one subject. An examination and license fee of thirty-five dollars (\$35.00) shall be paid to the secretary of the state board of medical examiners. Any applicant failing in the examination and being refused a license shall be entitled within six months of such refusal to a re-examination, but one such re-examination shall exhaust his privilege under the original examination. [L. '39, Ch. 218, § 4, amending R. C. M. 1935, § 3154.4. Approved March 17, 1939.

Section 9 repeals conflicting laws.

3154.5. Designation of licensees — renewals of licenses — fees — re-issuance — display — recording. Every license issued hereunder shall be designated as "registered chiropractor's license" and shall not contain any abbreviations thereof, nor any other designation nor title except that a statement of limitation shall be contained in said license referring to the licensee as "registered chiropractor—practice limited to the foot", so as not to mislead the public in regard to their right to treat other portions of the body. All licenses shall be recorded by the secretary of the state board of medical examiners in the manner of other medical licenses; the person receiving such license shall have it recorded in the office of the county clerk in the county in which he or she resides, and the record shall be indorsed thereon. In case the person so licensed shall remove to another county to practice, the holder shall record the license in a like manner in the county into which he or she removed, and the county clerk is entitled to charge and receive the usual fee for making such record. A renewal license fee of three dollars (\$3.00) shall be paid annually on July 1st of each year, and if not paid within three months thereafter, the license shall be revoked and shall be re-issued only upon original application and payment of a fee of thirty-five dollars (\$35.00). All licenses shall be conspicuously displayed by said chiropractors at their offices or other places of practice. [L. '39, Ch. 218, § 5, amending R. C. M. 1935, § 3154.5. Approved March 17, 1939.

Section 9 repeals conflicting laws.

3154.6. Refusal or revocation of license — re-issue. The state board of chiropractic medical examiners may, after due hearing, refuse to

grant, revoke or renew any license provided for in this act to a person, otherwise qualified, who obtained said license by fraudulent representation, for incompetency in practice, for use of untruthful or improbable statements to patients or in his advertisements, for habitual intoxication or for unprofessional and immoral conduct, or for selling or giving away alcohol or drugs for any illegal purpose, but said board may re-issue a license after a lapse of six months, if in its judgment such act or acts, conditions and/or conditions of disqualification shall have been remedied. [L. '39, Ch. 218, § 6, amending R. C. M. 1935, § 3154.6. Approved March 17, 1939.]

Section 9 repeals conflicting laws.

3154.10. Application of act. This act shall not apply to any physician licensed to practice his profession in this state, nor to surgeons of the United States army, navy and/or United States public health service, when in actual performance of their duties. [L. '39, Ch. 218, § 7, amending R. C. M. 1935, § 3154.10. Approved March 17, 1939.]

Section 9 repeals conflicting laws.

3154.11. To what acts statute not applicable—fitting of corrective shoes, arch supports, etc. Nothing in this act shall be construed as prohibiting the fitting, recommending, advertising, adjusting or the sale of corrective shoes, arch support, or similar mechanical appliances or foot remedies by retail dealers or manufacturers. [L. '39, Ch. 218, § 8. Approved March 17, 1939.]

Section 9 repeals conflicting laws.

CHAPTER 271

OPTOMETRY—REGULATION OF PRACTICE

Section

- 3156. Provisions regulating practice of optometry.
- 3157. Examiners in optometry—term of office.
- 3159. Examinations—qualifications of applicants—rules and regulations—board to make—eligibility—schooling required—application—fee for examination—fee upon passing—passing grade.
- 3162. Registration of certificate in county.
- 3166. Revocation of certificate for cause—unprofessional conduct—what is.
- 3167. Penalty for violations of act.

3156. Provisions regulating practice of optometry. It shall be unlawful for any person:

Subdivision 1. To practice optometry in the state of Montana unless he shall first have obtained a certificate of registration, in the manner hereinafter provided, and filed the

same or a certified copy thereof with the county clerk and recorder of the county of his residence, excepting such persons who at the present time are regularly registered optometrists and possess a valid, unrevoked certificate of registration; or

Subdivision 2. To sell or barter, or offer to sell or barter any certificate of registration issued by the state board of optometry; or

Subdivision 3. To purchase or procure by barter any such certificate of registration with intent to use the same as evidence of the holder's qualification to practice optometry; or

Subdivision 4. To alter with fraudulent intent in any material regard such certificate of registration; or

Subdivision 5. To use or attempt to use any such certificate of registration which has been purchased, fraudulently issued, counterfeited or materially altered as a valid certificate of registration; or

Subdivision 6. To practice optometry under a false or assumed name; or

Subdivision 7. To wilfully make any false statement in a material regard in any application for an examination before the state board of optometry or for a certificate of registration; or

Subdivision 8. To advertise by displaying a sign or by otherwise holding himself out to be an optometrist without having at the time of so doing a valid unrevoked certificate of registration; or

Subdivision 9. To replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions, without having at the time of so doing a valid, unrevoked certificate of registration as an optometrist; provided, however, that the provisions hereof shall not be construed so as to prevent an optical mechanic from doing the merely mechanical work upon such lenses; or

Subdivision 10. To take or make any measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye, without having at the time of so doing a valid, unrevoked certificate of registration; and any person who shall take or make any measurements or use any mechanical device whatsoever for such purpose or who shall in the sale of spectacles or eye glasses or lenses use, in the testing of the eyes therefor, lenses other than the lenses actually sold, shall be deemed to be practicing optometry within the meaning thereof; provided, that nothing in this section shall apply to the prescriptions of qualified optometrists or oculists when sent to a recognized optical house.

Subdivision 11. To advertise at a price, or any stated terms of such a price, or as being free, any of the following: The examination or treatment of the eyes; the furnishing of optometrical services, or the furnishing of a lens, lenses, glasses, or the frames or fitting thereof.

The provision of this subdivision does not apply to the advertising of goggles, sun-glasses, colored glasses, or occupational eye protective devices, provided the same are so made as not to have refractive values and are not advertised in connection with the practice of optometry or of any professional service. [L. '39, Ch. 130, § 1, amending R. C. M. 1935, § 3156. Approved and in effect March 9, 1939.]

Section 7 repeals conflicting laws.

3157. Examiners in optometry—term of office. A board is hereby created to be known as the Montana state board of examiners in optometry, hereinafter designated the board of examiners, which shall consist of three members appointed by the governor. The board shall have power to make rules and regulations for the conduct, business and procedure of the board and for the regulation, conduct, supervision and procedure governing all applicants for certificates of registration as optometrists and the practice of optometry not inconsistent with the provisions of this act. No person shall be eligible to appointment who is not a registered optometrist of the state of Montana and actually engaged in the exclusive practice of optometry in the state of Montana during the term of his office. Each of the members shall hold office for a term of six years or until his successor is appointed and qualified and shall be so classified that one member of said board shall retire every two years. The present members of the Montana state board of examiners in optometry shall continue to serve and act as members of the state board of optometry, but under the provisions of this act, during their respective terms or until their successors are appointed and qualified. The members of said board, before entering upon their duties, shall respectively take and subscribe to the oath required to be taken by other state officers, which shall be administered by the secretary of state, and filed in his office; and said board shall have a common seal. Appointments to fill vacancies caused by death, resignation or removal shall be made for the residue of such term by the governor. [L. '39, Ch. 130, § 2, amending R. C. M. 1935, § 3157. Approved and in effect March 9, 1939.]

Section 7 repeals conflicting laws.

3159. Examinations—qualifications of applicants—rules and regulations—board to make—eligibility—schooling required—application—fee for examination—fee upon passing—passing grade. Subdivision 1. The board of examiners shall make rules and regulations relative to and governing the qualifications of all applicants for certificates of registration as optometrists not inconsistent with the provisions of this act and if the applicant does not meet the requirements of such rules and regulations then the applicant will not be eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of such rules and regulations said applicant before beginning to practice optometry in this state must pass an examination given by and conducted before said board of examiners. All examinations shall be practical in character and designated to ascertain the applicant's fitness to practice the profession of optometry and shall be conducted in the English language. The board shall, from time to time, publish and distribute the examination requirements for a certificate to practice optometry in the state of Montana.

Subdivision 2. No person shall be eligible to take said examination who is not 21 years of age, and who is not a citizen of the United States of America, and who is not of good moral character.

Subdivision 3. On and after July 1st, 1925, no person shall be eligible to take said examination unless he shall have certificates of graduation from an accredited high school and from a school of optometry wherein the practice and science of optometry is taught in a course of study covering eight semesters, or four years, of actual attendance and which school has recognized standing with the international association of boards of examiners in optometry. In lieu of said certificates of graduation an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least six years in some other state or states.

Subdivision 4. Every person desiring to be examined in optometry shall file an application in the manner prescribed by said board at least four weeks before the examination shall be held, and a fee of twenty-five dollars (\$25.00) shall accompany said application.

Subdivision 5. Every person successfully passing said examination shall be registered in the board register, which shall be kept by the secretary of said board, and upon the payment of a fee of ten dollars (\$10.00) shall receive a certificate of registration signed by the members of said board.

Subdivision 6. In case an applicant for a certificate of registration has been admitted to practice optometry in any state, and has secured an average of seventy-five per cent (75%) in his examination in such other state, he may, in the discretion of the said board, be granted a certificate to practice his profession in Montana, without examination, upon his payment of all fees, provided the state from which said applicant comes offers equal privileges to applicants for certificates of registration from this state. [L. '39, Ch. 130, § 3, amending R. C. M. 1935, § 3159. Approved and in effect March 9, 1939.]

Section 7 repeals conflicting laws.

3162. Registration of certificate in county.

Recipients of said certificate of registration shall present the same for record to the county clerk and recorder of the county in which they reside, and shall pay a fee of one dollar (\$1.00) to the county clerk and recorder for recording same. Said county clerk and recorder shall record said certificate in a book to be provided by him for that purpose. Any person so licensed, removing his residence from one county to another in this state, shall, before engaging in the practice of optometry in such other county, obtain from the county clerk and recorder of the county in which said certificate of registration is recorded a certified copy of such record, or else obtain a new certificate of registration from the board of examiners, and shall before commencing practice in such county, file the same for record with the county clerk and recorder of the county to which he removes, and pay the county clerk and recorder thereof, for recording the same, a fee of one dollar (\$1.00). Any failure, neglect, or refusal on the part of any person holding such certificate or copy of record to file the same for record, as hereinbefore provided, for six months after the issuance thereof, shall forfeit the same. Such board shall be entitled to a fee of one dollar (\$1.00) for the reissue of any certificate and the county clerk and recorder of any county shall be entitled to a fee of one dollar (\$1.00) for making and certifying the copy of the record of any such certificate. [L. '39, Ch. 130, § 4, amending R. C. M. 1935, § 3162. Approved and in effect March 9, 1939.]

Section 7 repeals conflicting laws.

3166. Revocation of certificate for cause — unprofessional conduct — what is. Said board shall have the power to revoke any certificate of registration granted by it under this act for conviction of crime, habitual drunkenness, contagious or infectious disease, gross immorality, gross ignorance or inefficiency in his

profession, or for unprofessional conduct. Unprofessional conduct shall mean: Obtaining any fee by fraud or misrepresentation; employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by this act; directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked certificate of registration as an optometrist, or accepting employment to practice optometry from any company or corporation, or accepting employment to practice optometry for any company or corporation; permitting another to use his certificate of registration; soliciting or sending a solicitor from house to house; treatment or advice in which untruthful or improbable statements are made; professing to cure disease; advertising in which ambiguous or misleading statements are made; the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist; provided, that this act shall not prohibit legitimate or truthful advertising by any registered optometrist and provided that before any certificate shall be revoked, the holder thereof shall have notice in writing of the charge or charges against him, and, at a day specified in said notice, at least ten days after the service thereof, be given a public hearing, and have opportunity to produce testimony in his behalf, and to confront the witness against him. Any person whose certificate has been revoked may appeal to the courts or may after the expiration of ninety days apply to have the same re-granted and the same shall be re-granted him upon a satisfactory showing that the disqualification has ceased. [L. '39, Ch. 130, § 5, amending R. C. M. 1935, § 3166. Approved and in effect March 9, 1939.]

Section 7 repeals conflicting laws.

3167. Penalty for violations of act. Any person who shall violate any of the provisions of this act or the rules and regulations of the state board of examiners shall be decreed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200.00) and not more than five hundred dollars (\$500.00), or by imprisonment in the county jail not exceeding six (6) months, or by both fine and imprisonment as the court may determine. All fines thus received shall be paid into the treasury of the board. [L. '39, Ch. 130, § 6, amending R. C. M. 1935, § 3167. Approved and in effect March 9, 1939.]

Section 7 repeals conflicting laws.

CHAPTER 272

PHARMACY—REGULATION OF AND RESTRICTION ON SALE OF OPIATES —DRUG DEALERS' LICENSE

Section

3170. Sale of drugs, medicines, etc., unlawful except as provided herein.
- 3170.1. Definitions.
- 3171, 3172. Repealed.
3173. Montana state board of pharmacy—qualifications of members—term and appointment.
3174. Montana state board of pharmacy—powers of board—licenses—revocation.
- (a) Organization of board—officers.
- (b) Powers and duties of board of pharmacy.
3175. Salaries and expenses of officers of board.
3176. Examination of applicants for registration—fees—certificates.
- Qualifications for examination.
- Reciprocity.
- Pharmacists or assistants not required to be examined or to register anew under this act.
3177. Annual payment of registration fees.
- 3178-3184. Repealed.
- 3189-3193. Repealed.
- 3199-3202. Repealed.
- 3202.3-3202.6. Repealed.
- 3202.7-3202.9. Repealed.
- 3202.7a. Licenses for stores selling drugs—"certified pharmacy"—revocation of licenses.
- 3202.7b. Judicial review of acts of board.
- 3202.7c. Use of words "drug store", "pharmacy", etc.
- 3202.7d. Wrongful labeling.
- 3202.7e. Quality of drug sold—adulteration—who is responsible.
- 3202.7f. Exceptions.
- 3202.10. Attorney general to be attorney for state board of pharmacy—prosecutions—secretary to assist in enforcement—duties of county attorneys.
- 3202.11. Violation of act a misdemeanor.
- 3202.12. Disposition of fees and fines.
- 3202.13. Construction of act—partial invalidity saving clause.
- 3202.13a. Repeals.

3170. Sale of drugs, medicines, etc., unlawful except as provided herein. (a) It shall be unlawful for any person to compound, dispense, vend or sell at retail, drugs, medicines, chemicals or poisons in any place other than a pharmacy, except as hereinafter provided.

(b) It shall be unlawful for any proprietor, owner or manager of a pharmacy, or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an assistant pharmacist in the temporary absence of such pharmacist.

(c) It shall be unlawful for any person falsely to assume or pretend to the title of

pharmacist or assistant pharmacist unless such person has a license as such issued and in force pursuant to the terms of this act.

(d) It shall be unlawful for any person other than a licensed and registered pharmacist, an assistant licensed and registered pharmacist to compound, dispense, vend or sell at retail, drugs, medicines, chemicals or poisons, except as in this act provided. [L. '39, Ch. 175, § 1, amending R. C. M. 1935, § 3170. Approved and in effect March 17, 1939.

1936. As to drugs and medicines which are sold in the manufacturers' original packages, and the sale of which is not specifically prohibited by other statutes, this act is not a valid exercise of the police power, and hence is unconstitutional. *State v. Stephens*, 102 Mont. 414, 59 P. (2d) 54.

3170.1. Definitions. (a) The term "pharmacy" shall mean a drug store or other established place regularly registered by the state board of pharmacy, in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended or sold at retail.

(b) The term "pharmacist" shall mean a natural person licensed by the state board of pharmacy to prepare, compound, dispense and sell drugs, medicines, chemicals and poisons, and such person shall be entitled to affix to his name the term REG-PH.

(c) The term "assistant pharmacist" shall mean a natural person licensed as such by the state board of pharmacy to prepare, compound, dispense and sell drugs, medicines, chemicals and poisons in a pharmacy having a pharmacist in charge.

(d) The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2) or (3); but does not include devices or their components, parts or accessories.

(e) The term "medicine" shall mean any remedial agent which has the property of curing, preventing, treating or mitigating diseases, or which is used for such purpose.

(f) "Poisons" shall mean any substance, which when introduced into the system, either directly or by absorption, produces violent, morbid or fatal changes or which destroys living tissue with which it comes in contact.

(g) "Chemical" means all medicinal or industrial substances, whether simple or compound or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(h) The term "board" or "state board of pharmacy" shall mean the Montana state board of pharmacy.

(i) The term "secretary" shall mean the secretary of the Montana state board of pharmacy.

(j) The word "person" shall be construed to include every individual, co-partnership, corporation or association, unless the context otherwise requires.

(k) Masculine words shall include the feminine and neuter and the singular includes the plural.

(L) The term "wholesale" shall mean and include any sale for the purpose of resale.

(m) The phrase "commercial purposes" shall mean the ordinary purposes of trade, agriculture, industry and commerce, exclusive of the practices of medicine and pharmacy. [L. '39, Ch. 175, § 2, amending R. C. M. 1935, § 3170 by adding a new section 3170.1. Approved and in effect March 17, 1939.]

3171, 3172. Repealed. [L. '39, Ch. 175, § 18. See § 3202.13a.]

3173. Montana state board of pharmacy — qualifications of members — term and appointment. The Montana state board of pharmacy shall consist of three (3) pharmacists who shall be graduates of the college of pharmacy of the state university of Montana or of a college or school of pharmacy recognized and approved by, or a member of, the American Association of Colleges of Pharmacy; each of whom shall have had at least five (5) consecutive years of practical experience as a pharmacist immediately preceding his appointment; provided, however, that one (1) member of the board may be a registered pharmacist of fifteen (15) years practical experience and actually engaged in the practice of pharmacy.

Term of office. The members of the board shall be appointed by the governor from the list hereinafter subscribed, one in each year; each member shall serve for a term of three (3) years and until his successor shall have been appointed and qualified. Vacancies shall be filled by appointment by the governor for the unexpired term. Any member of the board who, during his incumbency, ceases to be actively engaged in the practice of pharmacy in this state, shall be automatically disqualified from membership upon the board, and such disqualification shall result in a

vacancy which may be filled as provided. Any member may be removed from office by the governor upon proof of malfeasance or misfeasance in office after reasonable notice of charges against him and fair hearing thereon. The members of the Montana state board of pharmacy heretofore appointed and now holding office shall continue in office as members of the board hereby established until their respective terms expire. The Montana state pharmaceutical association shall annually submit to the governor the names of five (5) persons, qualified as prescribed herein, for each appointment to be made, from which list the governor shall appoint a member or members of the board as heretofore prescribed. [L. '39, Ch. 175, § 3, amending R. C. M. 1935, § 3173. Approved and in effect March 17, 1939.]

3174. Montana state board of pharmacy — powers of board — licenses — revocation. (a) **Organization of board — officers.** The board shall annually elect from its members a president, a vice-president, a treasurer, and a pharmacist, who may or may not be a member, as secretary.

(b) **Powers and duties of board of pharmacy.** The Montana state board of pharmacy shall have power, and it shall be its duty:

(1) To regulate the practice of pharmacy in the state of Montana subject to the provisions of this act.

(2) To determine the minimum equipment necessary in and for a pharmacy and drug store.

(3) To regulate, under therapeutic classification, the sale of drugs, medicines, chemicals and poisons and their labeling.

(4) To regulate the quality of all drugs and medicines dispensed in this state, using the United States pharmacopoeia and the national formulary, or any revisions thereof, as the standards.

(5) To enter and inspect by its duly authorized representative at any reasonable times any and all places where drugs, medicines, chemicals or poisons are sold, vended, given away, compounded, dispensed or manufactured. It shall be a misdemeanor for any person to refuse to permit or otherwise prevent such representative from entering any such place and making such inspection.

(6) To examine, license and register as pharmacists all applicants whom the board shall deem qualified as such as prescribed herein. To license pharmacies and certain stores, and to issue certificates of "certified pharmacy" as in this act provided.

(7) To revoke temporarily or permanently, upon fair hearing, after reasonable notice of formal charges have been served, licenses issued by it to any pharmacist or assistant pharmacist whenever the holder of such license has obtained the same by false representations or fraud of any character or shall be an habitual drunkard or addicted to the use of narcotic drugs, or shall have been convicted of a felony, or shall have been convicted of violating the pharmacy law, or shall have been found guilty by the board of incompetency in the preparation of prescriptions, or guilty of gross immorality affecting the discharge of his duties as a pharmacist or assistant subject to the right of any person whose license may be revoked to review by the district court of the proper county on any question of law and fact.

(8) To report its proceedings annually to the governor and to the state pharmaceutical association with such information and recommendations as it deem proper, giving the names of pharmacists and assistant pharmacists registered and licensed during the year, and the items of its receipts and disbursements.

(9) To employ necessary assistants, and make rules for the conduct of its business.

(10) To perform such other duties and exercise such other powers as the provisions of the act may require.

(11) For the purposes aforesaid, it shall also be the duty of the board to make and publish uniform rules and regulations not inconsistent herewith, for carrying out and enforcing the provisions of the act. [L. '39, Ch. 175, § 4, amending R. C. M. 1935, § 3174. Approved and in effect March 17, 1939.]

3175. Salaries and expenses of officers of board. Each member of the board shall receive five dollars (\$5.00) a day for his actual services as such, and his necessary expenses in attending meetings. The secretary shall receive a salary to be fixed by the board, and all expenses necessarily incurred by him in the performance of his duties. The secretary shall give bond in such amount as the board may from time to time require, which bond shall be conditioned for the faithful performance of his duties and shall be approved by the board. [L. '39, Ch. 175, § 5, amending R. C. M. 1935, § 3175. Approved and in effect March 17, 1939.]

3176. Examination of applicants for registration — fees — certificates. (a) The board shall meet at least once a year to examine applicants for registration as pharmacists and assistant pharmacists and to transact its other business, giving reasonable notice of all ex-

aminations by mail, to all known applicants therefor. The secretary shall record the names of all persons examined by the board together with the grounds upon which the right of each to examination was claimed and also the names of all persons registered by examination or otherwise. The fee for any examination shall be fifteen dollars (\$15.00) which fee may, in the discretion of the board, be returned to applicants not taking the examination.

(b) Upon again making payment of such fee any applicant who fails may be entitled to take the next succeeding examination free of charge.

(c) Fees for registration by reciprocity shall be twenty-five dollars (\$25.00).

Qualifications for examination. To be entitled to examination by the board as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, at least twenty-one years of age, and shall be a graduate of the school of pharmacy of the state university of Montana or of a college or school of pharmacy recognized and approved by, or a member, of the American Association of Colleges of Pharmacy, but such applicant shall not receive a license until he has at least one year of practical experience in a pharmacy which has been approved by the board of pharmacy. During this year, provided applicant has passed such examination, he shall be licensed as an assistant pharmacist only.

Reciprocity. The board may, in its discretion, grant registration without examination, to any pharmacist licensed by the board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state, provided the requirements for registration in such other state are, in the opinion of the board, equivalent to the requirements herein provided. Every person licensed and registered under this act shall receive from the state board of pharmacy an appropriate certificate attesting the fact as it may be which certificate shall be conspicuously displayed at all times in his place of business. If the holder be entitled to manage or conduct a pharmacy in the state for himself or another, the fact shall be set forth in the certificate.

Pharmacists or assistants not required to be examined or to register anew under this act. Persons, who, at the time of the enactment of this law, hold certificates of registration as pharmacists, or assistant pharmacists, granted by the state board of pharmacy of this state, shall not be required to submit to examinations or to register anew under this law, but all such persons shall apply for and secure annual renewals of their present registration as pro-

vided in this act, and in all other respects be amenable to and governed by the provisions of this act and the rules and regulations of the board from time to time promulgated under this act. [L. '39, Ch. 175, § 6, amending R. C. M. 1935, § 3176. Approved and in effect March 17, 1939.]

3177. Annual payment of registration fees. Every person licensed and registered by the board shall annually pay to the board a renewal of registration fee of five dollars (\$5.00). It shall be unlawful for any such person who refuses or fails to pay such renewal fee to practice pharmacy in this state. Every certificate and renewal shall expire at the time prescribed, not later than one year from its date. Any person who has been registered and licensed by the board and has defaulted in the payment of said renewal fee may be reinstated within two (2) years of such default without examination upon payment of the arrears. [L. '39, Ch. 175, § 7, amending R. C. M. 1935, § 3177. Approved and in effect March 17, 1939.]

3181. Compounding of drugs by persons other than registered pharmacists—sale of patent medicines.

1936. As to drugs and medicines which are sold in the manufacturers' original packages, and the sale of which is not specifically prohibited by other statutes, this act is not a valid exercise of the police power, and hence is unconstitutional. *State v. Stephens*, 102 Mont. 414, 59 P. (2d) 54.

3178-3184. Repealed. [L. '39, Ch. 175, § 18. See § 3202.13a.]

3184. Adulterated drugs.

1936. Cited in *State v. Stephens*, 102 Mont. 414, 59 P. (2d) 54.

3189-3193. Repealed. [L. '37, Ch. 176, § 29. See § 3202.42.]

3199-3202. Repealed. [L. '37, Ch. 176, § 29. See § 3202.42.]

3202.3-3202.6. Repealed. [L. '37, Ch. 176, § 29. See § 3202.42.]

3202.7-3202.9. Repealed. [L. '39, Ch. 175, § 18. See § 3202.13a.]

3202.7a. Licenses for stores selling drugs — "certified pharmacy" — revocation of licenses.

(a) The state board of pharmacy shall upon application upon such forms as it may prescribe, and upon the payment of an annual fee of three dollars (\$3.00), license pharmacies and stores other than a pharmacy wherein may be sold ordinary household or medicinal drugs prepared in sealed packages or bottles by a manufacturer, qualified under the laws of the state wherein such manufacturer re-

sides. The name and address of such manufacturer shall appear conspicuously on each package sold by such licensee. It shall be unlawful for any such store to sell such household medicinal drugs, without first having secured such license and thereafter keeping the same in force by proper renewal, provided, also, that nothing herein shall be construed to prevent any vendor from selling any patent or proprietary medicine in the original package when plainly labeled, nor such non-medical articles as are usually sold by such vendors.

(b) The state board of pharmacy shall require and provide for the annual registration and licensing of every pharmacy now or hereafter doing business within this state within the meaning of this act. Upon presentation of evidence satisfactory to the board, it may license any pharmacy as a "CERTIFIED PHARMACY", provided, however, that such license shall be granted only to such pharmacies as are operated by registered pharmacists or assistant registered pharmacists qualified as herein prescribed. Such license must be exposed in a conspicuous place in the pharmacy for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct such pharmacy unless such license has been duly issued and is in full force and effect.

(c) The board may suspend, revoke or refuse to renew any store or pharmacy license obtained by false representation, or fraud of any character, or when the pharmacy for which the license shall have been issued is kept open for the transaction of business without a pharmacist in charge thereof, or when the person to whom license shall have been granted has been convicted for violation of any of the provisions of the act or for a felony, or, if a natural person, whose pharmacist or assistant pharmacist license has been revoked or when the store or pharmacy is conducted in violation of the provisions of this act. Before any license can be revoked the holder thereof shall be entitled to a hearing by the board after reasonable notice, and judicial review of the action of the board. [L. '39, Ch. 175, § 8. Approved and in effect March 17, 1939.]

3202.7b. Judicial review of acts of board.

(a) Review by the district court of any order revoking either permanently or temporarily a license of any pharmacist or assistant pharmacist, or any store or pharmacy, or any order, decision or finding of the board shall be made by petition in writing filed with the clerk of the district court of the county wherein the pharmacist or assistant phar-

macist, store or pharmacy, or other affected person or business was operating at the time of the revocation of any such license, or at the time of such order, decision or finding. The petition shall concisely state the facts and order complained against.

(b) Upon the filing of said petition an order shall be made by the district judge setting a time for hearing on said petition not less than twenty (20) days thereafter and directing service of the petition upon the secretary of the board not less than three (3) days thereafter. The board must file and serve answer on the merits not less than five (5) days before the hearing.

(c) The court shall have power to sustain the board's action or annul the same, or order the board to act further or to restore any revoked license. Appeals from the district court's action to the supreme court may be taken at any time within sixty (60) days after entry of the final order or judgment of the court. [L. '39, Ch. 175, § 9. Approved and in effect March 17, 1939.]

3202.7c. Use of words "drug store", "pharmacy", etc. It shall be unlawful for any person to carry on, conduct or transact a retail business under a name which contains as a part thereof, the words, "drugs", "drug store", "pharmacy", "medicine", "apothecary", or "chemist shop", or any abbreviations, translations, extension or variation thereof; or in any manner by advertisement circular or poster, sign or otherwise, describe or refer to the place of business conducted by such person by such term, abbreviations, translation, extension or variation unless the place so conducted is a pharmacy within the meaning of this act, and duly licensed as such and in charge of a registered pharmacist. [L. '39, Ch. 175, § 11. Approved and in effect March 17, 1939.]

3202.7d. Wrongful labeling. It shall be unlawful for any person who prepares prescriptions, drugs, medicines, chemicals or poisons wilfully [willfully], negligently, or ignorantly to omit to label the package or receptacle, label it falsely, substitute an article different from the one ordered or deviate in any manner from the requirements of an order or prescription. [L. '39, Ch. 175, § 2. Approved and in effect March 17, 1939.]

3202.7e. Quality of drug sold—adulteration—who is responsible. (a) It shall be unlawful for any person or his agent to adulterate any drug, medicinal substance or preparation authorized by the United States pharmacopeia or the national formulary or any revision

thereof, or any drug, medicinal substance or preparation used or intended to be used in medical practice.

(b) It shall be unlawful to mix with any such article any foreign or inert substance for the purpose of weakening its medicinal effect or of cheapening it.

(c) Nothing in this act shall be construed to change any of the provisions of the food, drug and cosmetic act of Montana. [L. '39, Ch. 175, § 13. Approved and in effect March 17, 1939.]

3202.7f. Exceptions. (a) Nothing in this act shall subject a person duly licensed in this state to practice medicine, dentistry or veterinary medicine to inspection by the board nor prevent such person from compounding or using drugs, medicines, chemicals or poisons in his practice nor prevent one duly licensed to practice medicine from furnishing to a patient such drugs, medicines, chemicals or poisons as he deems proper in the treatment of such patient.

(b) Nothing herein shall prevent the sale of drugs, medicines, chemicals or poisons at wholesale.

(c) Nothing herein shall prevent the sale of drugs, chemicals or poisons, either at wholesale or retail, for use for commercial purposes, or in the arts, nor be construed to change any of the provisions of chapter 238 of volume II of the political code of the revised codes of Montana, 1935, relating to the sale of insecticides and fungicides, and nothing in this act shall prevent the sale of common household preparations and other drugs, provided stores selling same are licensed under the terms of this act.

(d) Nothing herein shall apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature, for use for non-medicinal purposes. [L. '39, Ch. 175, § 14. Approved and in effect March 17, 1939.]

3202.10. Attorney general to be attorney for state board of pharmacy—prosecutions—secretary to assist in enforcement—duties of county attorneys. The attorney general of the state of Montana shall be the attorney for the Montana state board of pharmacy but said board may in its discretion employ other counsel. The secretary of the Montana state board of pharmacy shall, under such rules and regulations as the board may prescribe, assist the board and the attorney general or other counsel in the administration and enforcement of this act. It shall be the duty of the county

attorney of any county wherein any offense hereunder is committed to prosecute the offender. The board, its secretary or the county attorney is authorized to examine the books of any manufacturer, druggist, storekeeper, wholesale dealer, pharmacist, assistant pharmacist or pharmacy within the state for the purpose of acquiring information to aid in prosecutions hereunder. [L. '39, Ch. 175, § 10, amending R. C. M. 1935, § 3202.10. Approved and in effect March 17, 1939.]

3202.11. Violation of act a misdemeanor.

Any person, firm, co-partnership or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction for each violation shall be punished accordingly, and any thereof so convicted shall automatically lose any license issued by the board. [L. '39, Ch. 175, § 15, amending R. C. M. 1935, § 3202.11. Approved and in effect March 17, 1939.]

3202.12. Disposition of fees and fines. (a) The board shall, in each year, turn over out of the annual fees collected by the board to the Montana state pharmaceutical association for the advancement of the science and art of pharmacy, and for the enforcement of this or any other law relating to drug stores, or other stores licensed herein, or relating to pharmacists, two dollars (\$2.00) for each pharmacist and assistant pharmacist who shall have paid his renewal fee during such year.

(b) All fees collected by or under the authority of the state board of pharmacy of the state of Montana for registration and licenses issued under this act shall be transmitted to the state board of pharmacy as provided by law.

(c) All fines paid under the provisions of this act or in connection with the enforcement thereof shall be paid to the credit of the common school fund of the state of Montana; provided that no salaries or expenses of the board of pharmacy shall be paid out of the state treasury.

(d) On or before June 30th in each fiscal year the board shall remit to the state treasurer for the credit of and to be paid into the general fund, any moneys in its possession in excess of the sum of fifteen hundred dollars (\$1500.00). [L. '39, Ch. 175, § 16, amending R. C. M. 1935, § 3202.12. Approved and in effect March 17, 1939.]

3202.13. Construction of act—partial invalidity saving clause. If any section, subsection, clause or phrase of this act shall be held invalid, such decision shall not affect the validity of the remaining portions of this act. It is hereby declared that this act would have

been passed irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases are declared unconstitutional or invalid. [L. '39, Ch. 175, § 17, amending R. C. M. 1935, § 3202.13. Approved and in effect March 17, 1939.]

3202.13a. Repeals. Sections 3171, 3172, 3178, 3179, 3180, 3181, 3182, 3183, 3284, 3202.7, 3202.8 and 3202.9, revised codes of Montana, 1935, shall be and the same are hereby repealed. All acts and parts of acts in conflict herewith are hereby repealed. [L. '39, Ch. 175, § 18. Approved and in effect March 17, 1939.]

CHAPTER 272A

UNIFORM DRUG ACT—NARCOTICS

Section

- 3202.14. Definitions.
- 3202.15. Acts prohibited.
- 3202.16. Manufacturers and wholesalers.
- 3202.17. Qualifications for licenses—moral character — equipment — previous conviction — suspension.
- 3202.18. Sale on written orders—special orders—to government employees—to masters of ships and aircraft—to foreigners.
 - (3) Use of official written orders.
 - (4) Possession lawful.
- 3202.19. Sales by apothecaries—written prescriptions —refilling — discontinuing business—sale to physicians, dentists, and veterinarians
- 3202.20. Professional use of narcotic drugs—physicians—dentists—veterinarians.
- 3202.21. Preparations exempted — quantities limited —liniments for external use, etc.—conditions of exemptions — construction of section.
- 3202.22. Record to be kept—physicians, dentists, etc. — when not required — manufacturers — wholesalers — apothecaries — vendors of exempted preparations — form and preservation of records — federal narcotic laws.
- 3202.23. Labels — manufacturers — wholesalers — alteration or removal—apothecaries.
- 3202.24. Authorized possession of narcotic drugs by individuals.
- 3202.25. Issuance and execution of search warrant—seizure of narcotic drugs—private dwellings—search—service of warrant.
- 3202.26. Hearing of return—disposal of narcotic drugs and other article seized—evidence —sworn complaint—forfeiture—judgment —not bar to other prosecution.
- 3202.27. Duty of peace officers to arrest offenders and seize narcotic drugs—warrant to hold seized property.
- 3202.28. Replevin of narcotic drugs and other property forbidden.
- 3202.29. Fines and costs a lien on real estate—leased premises—collection of fines and costs.
- 3202.30. Persons and corporations exempted—when possession not unlawful.
- 3202.31. Common nuisances.

Section

- 3202.32. Narcotic drugs to be delivered to state officials—forfeiture and destruction—delivery to board of health—to hospitals—record of receipt and disposition by board of health secretary.
- 3202.33. Notice of conviction to be sent to licensing board—license revocation—reinstatement.
- 3202.34. Record confidential—open to official inspection.
- 3202.35. Fraud or deceit in obtaining narcotic drugs—privileged communication—false statement—representations—false prescription—label—application of section.
- 3202.36. Exceptions and exemptions—negation not required to be negated—burden of proof.
- 3202.37. Enforcement and cooperation.
- 3202.38. Penalties.
- 3202.39. Effect of acquittal or conviction under federal narcotic laws.
- 3202.40. Constitutionality.
- 3202.41. Interpretation.
- 3202.42. Repeals.
- 3202.43. Name of act.

3202.14. Definitions. The following words and phrases, as used in this act, shall have the following meanings, unless the context otherwise requires:

(1) “Person” includes any corporation, association, copartnership, or one or more individuals.

(2) “Physician” means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment.

(3) “Dentist” means a person authorized by law to practice dentistry in this state.

(4) “Veterinarian” means a person authorized by law to practice veterinary medicine in this state.

(5) “Manufacturer” means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) “Wholesaler” means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written orders, but not on prescriptions.

(7) “Apothecary” means a licensed pharmacist as defined by the laws of this state and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this act shall be construed as conferring on a person who is not registered nor licensed as a pharmacist

any authority, right, or privilege, that is not granted to him by the pharmacy laws of this state.

(8) “Hospital” means an institution for the care and treatment of the sick and injured, approved by the secretary of the state board of health as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian.

(9) “Laboratory” means a laboratory approved by the secretary of the state board of health as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(10) “Sale” includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(11) “Coca leaves” includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(12) “Opium” includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture or preparation of opium, but does not include apomorphine or any of its salts.

(13) “Cannabis” includes the following substances under whatever names they may be designated: (a) The dried flowering or fruiting tops of the pistillate plant *Cannabis Sativa* L., from which the resin has not been extracted, (b) the resin extracted from such tops, and (c) every compound, manufacture, salt, derivative, mixture, or preparation of such resin, or of such tops from which the resin has not been extracted, and (d) marihuana seeds or plants.

(14) “Narcotic drugs” means coca leaves, opium, cannabis, marihuana, Indian hemp, and every substances neither chemically nor physically distinguishable from them.

(15) “Federal narcotic laws” means the laws of the United States relating to opium, coca leaves, and other narcotic drugs.

(16) “Official written order” means an order written on a form provided for that purpose by the United States commissioner of narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided,

then on an official form provided for that purpose by the secretary of the state board of health.

(17) "Dispense" includes distribute, leave with, give away, dispose of, or deliver.

(18) "Registry number" means the number assigned to each person registered under the federal narcotic laws. [L. '37, Ch. 176, § 1. Approved and in effect March 18, 1937.]

3202.15. Acts prohibited. It shall be unlawful for any person to manufacture, possess, knowingly permit to grow, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this act. [L. '37, Ch. 176, § 2. Approved and in effect March 18, 1937.]

3202.16. Manufacturers and wholesalers. No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the secretary of the state board of health. [L. '37, Ch. 176, § 3. Approved and in effect March 18, 1937.]

3202.17. Qualifications for licenses — moral character — equipment — previous conviction — suspension. No license shall be issued under the foregoing section unless and until the applicant therefor has furnished proof satisfactory to the secretary of the state board of health:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has within five years been convicted of a willful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict. The secretary of the state board of health may suspend or revoke any license for cause. [L. '37, Ch. 176, § 4. Approved and in effect March 18, 1937.]

3202.18. Sale on written orders — special orders—to government employees—to masters of ships and aircraft — to foreigners. (1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

(a) To a manufacturer, wholesaler or apothecary.

(b) To a physician, dentist, or veterinarian.

(c) To a person in charge of a hospital, but only for use by or in that hospital.

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(2) A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties.

(b) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft, when not in port. Provided: Such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States public health service.

(c) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(3) **Use of official written orders.** An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this act. It shall be deemed a compliance with this subsection if the parties to the transaction have complied with the federal narcotic laws, respecting the requirements governing the use of order forms.

(4) **Possession lawful.** Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor.

(5) A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political sub-

division thereof, and a master or other proper officer of a ship or aircraft, who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer, nor dispense, nor otherwise use such drugs, within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this act. [L. '37, Ch. 176, § 5. Approved and in effect March 18, 1937.]

3202.19. Sales by apothecaries — written prescriptions — refilling — discontinuing business — sale to physicians, dentists, and veterinarians. (1) An apothecary, in good faith, may dispense and sell narcotic drugs to any person upon a written prescription of a physician, dentist, or veterinarian, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this act. The prescription shall not be refilled.

(2) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(3) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty percent of the complete solution to be used for medical purposes. [L. '37, Ch. 176, § 6. Approved and in effect March 18, 1937.]

3202.20. Professional use of narcotic drugs — physicians — dentists — veterinarians. (1) Physicians and dentists. A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer, and dispense narcotic drugs, or he may cause the same to be administered by a nurse or interne under his direction and supervision.

(2) Veterinarians. A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer, and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. [L. '37, Ch. 176, § 7. Approved and in effect March 18, 1937.]

3202.21. Preparations exempted—quantities limited—liniments for external use, etc.—conditions of exemptions—construction of section. Except as otherwise in this act specifically provided, this act shall not apply to the following cases:

(1) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce, (a) not more than two grains of opium, (b) not more than one-quarter grain of morphine or of any of its salts, (c) not more than one grain of codeine or of any of its salts, (d) not more than one-eighth of a grain of heroin or of any of its salts, (e) not more than one-half of a grain of extract of cannabis nor more than one-half of a grain of any more potent derivative or preparation of cannabis; (f) and not more than one of the drugs named above in clauses (a), (b), (c), (d), and (e).

(2) Prescribing, administering, dispensing, or selling at retail of liniments, ointments, and other preparations, that are susceptible of external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments, or preparations, except that this act shall apply to all liniments, ointments, and other preparations, that contain coca leaves in any quantity or combination.

The exemptions authorized by this section shall be subject to the following conditions:

(a) No person shall prescribe, administer, dispense, or sell under the exemptions of this section, to any one person, or for the use of any one person or animal, any preparation or preparations included within this section, when he knows, or can by reasonable diligence ascertain, that such prescribing, administering, dispensing, or selling will provide the person to whom or for whose use, or the owner of the animal for the use of which, such preparation is prescribed, administered, dispensed, or sold within any forty-eight consecutive hours, with more than four grains of opium, or more than one-half grain of morphine or of any of its salts, or more than four grains of codeine or of any of its salts, or more than one grain of extract of cannabis or one grain of any more potent derivative or preparation of cannabis,

or more than one-quarter of a grain of heroin or of any of its salts, or will provide such person or the owner of such animal, within 48 consecutive hours, with more than one preparation exempted by this section from the operations of this act.

(b) The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, administered, dispensed, or sold, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone. Such preparations shall be prescribed, administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this act.

Nothing in this section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, dispensed, or sold, to any person or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold, in compliance with the general provisions of this act. [L. '37, Ch. 176, § 8. Approved and in effect March 18, 1937.]

3202.22. Record to be kept—physicians, dentists, etc.—when not required—manufacturers—wholesalers—apothecaries—vendors of exempted preparations—form and preservation of records—federal narcotic laws. (1) Physicians, dentists, veterinarians, and other authorized persons. Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs, shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application, shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

Provided: That no record need be kept of narcotic drugs administered, dispensed, or professionally used in the treatment of any one patient, when the amount administered, dispensed, or professionally used for that purpose does not exceed in any forty-eight consecutive hours, (a) four grains of opium, or (b) one-half of a grain or morphine or of any of its salts, or (c) two grains of codeine or of any of its salts, or (d) one-fourth of a

grain of heroin or of any of its salts, or (e) one grain of extract of cannabis or one grain of any more potent derivative or preparation of cannabis, or (f) a quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated.

(2) Manufacturers and wholesalers. Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection 5 of this section.

(3) Apothecaries. Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection 5 of this section.

(4) Vendors of exempted preparations. Every person who purchases for resale, or who sells narcotic drug preparations exempted by section 8 [3202.21] of this act, shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subsection 5 of this section.

(5) Form and preservation of records. The form of records shall be prescribed by the secretary of the state board of health. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or eegonine contained in or producible from crude opium or coca leaves received or produced; and the proportion of resin contained in or producible from the dried flowering or fruiting tops of the pistillate plant *Cannabis Sativa* L., from which the resin has not been extracted, received or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute com-

pliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft. [L. '37, Ch. 176, § 9. Approved and in effect March 18, 1937.]

3202.23. Labels — manufacturers — wholesalers — alteration or removal — apothecaries.

(1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a prescription under this act, shall alter, deface, or remove any label so affixed.

(2) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist, or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing his own name, address, and registry number, or the name, address, and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address, and registry number of the physician, dentist, or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface, or remove any label so affixed. [L. '37, Ch. 176, § 10. Approved and in effect March 18, 1937.]

3202.24. Authorized possession of narcotic drugs by individuals. A person to whom or for whose use any narcotic drug has been prescribed, sold, or dispensed, by a physician, dentist, apothecary, or other person authorized under the provisions of section 5 [3202.18] of this act, and the owner of any animal for which any such drug has been prescribed, sold, or dispensed, by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. [L. '37, Ch. 176, § 11. Approved and in effect March 18, 1937.]

3202.25. Issuance and execution of search warrant — seizure of narcotic drugs — private dwellings — search — service of warrant. If upon the sworn complaint of any person, it shall be made to appear to any judge of the district court that there is probable cause to believe that narcotic drugs are being manu-

factured, sold, exchanged, given away, bartered, or otherwise disposed of, or kept contrary to law, such judge shall, with or without the approval of the county attorney, issue a warrant directed to any peace officer in the county commanding him to search the premises designated and described in such complaint and warrant, and to seize all narcotic drugs there found, together with vessels and vehicles in which it is contained, and all implements, furniture, fixtures and other articles used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing, or otherwise disposing of such narcotic drugs and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all narcotic drugs, implements, furniture, fixtures, vehicles, and other articles seized, and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of the same, the return shall so state. No warrant shall be issued to search a private dwelling occupied as such, unless some part of it is used as a store or shop, hotel or boarding house, or for any other purpose than a private residence, or unless such residence is a place of public resort. A copy of said warrant shall be served upon the person or persons found in possession of any such narcotic drugs, furniture, fixtures, vehicles, or articles so seized, and if no person be found in possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same were found, or if there be no door, then in any conspicuous place upon the premises. [L. '37, Ch. 176, § 12. Approved and in effect March 18, 1937.]

3202.26. Hearing of return — disposal of narcotic drugs and other article seized — evidence — sworn complaint — forfeiture — judgment — not bar to other prosecution. Upon the return of the warrant as provided in the last preceding section, the judge shall fix the time, not less than ten days nor more than twenty days thereafter, for the hearing of said return, when the court shall proceed to hear and determine whether or not the implements, furniture, fixtures, vehicles, or other articles so seized, or any part thereof, were used or in any manner kept or possessed by any person with the intention of violating any of the provisions of the laws of this state relating to narcotic drugs. At such hearing any person claiming any interest in any of the implements, furniture, fixtures, vehicles, or other articles seized, may appear and be heard upon filing a verified claim setting forth particularly the character and extent of his interest, but upon such hearing the sworn complaint or

affidavit upon which the search warrant was issued and the possession of such narcotic drugs shall be prima facie evidence of the contraband character of the drugs and implements, furniture, fixtures, vehicles and other articles seized, and the burden shall rest upon the claimant to show, by competent evidence, his property right or interest therein, and that the same were not used in violation of, and were not in any manner kept or possessed with the intention of violating any of the provisions of the laws of this state relating to narcotic drugs. If, upon such hearing, the evidence warrants, or if no person shall appear as claimant, the court shall thereupon enter a judgment of forfeiture and order such implements, furniture, fixtures, vehicles and articles destroyed forthwith by the officer having custody of the same at the time of adjudication; provided, however, the judge may, in his discretion, appoint a special officer for the purpose of executing the judgment of forfeiture by destroying said drugs and property; provided, further, however, that if in the opinion of the judge any of such forfeited vehicles or property, is of value and adapted to any lawful use, such judge shall, as a part of the order and judgment, direct that such property, other than narcotic drugs, shall be sold as upon execution by the officer having them in custody, and the proceeds of such sale, after the payment of all costs of such proceeding, shall be paid into the common school fund of the school district in which the same were seized. Action under this section and the forfeiture, destruction, or sale of any property thereunder, shall not be a bar to any prosecution under any other provision or provisions of the laws of this state relating to narcotic drugs and provided further, that all narcotic drugs so seized shall be held in the custody of the court issuing the order, for disposition as otherwise provided in this act. [L. '37, Ch. 176, § 13. Approved and in effect March 18, 1937.]

3202.27. Duty of peace officers to arrest offenders and seize narcotic drugs—warrant to hold seized property. When any violation of any provisions of the laws of this state relating to narcotic drugs shall occur in the presence of any sheriff, constable, marshal, or other officer having power to serve criminal process, it shall be the duty of such officer without warrant, to arrest the offender, and to seize the drugs, furniture, fixtures, vessels, vehicles and appurtenances thereunto belonging, so unlawfully used, and to take such offender immediately before the court or judge having jurisdiction in the premises and there make complaint under oath, charging the offense so committed, and he shall also make

return setting forth a particular description of the narcotic drugs and property seized and of the place and where the same was so seized, whereupon the court or judge shall issue a warrant commanding and directing the officer to hold in his possession the property so seized, until discharged by process of law, and such property shall be held and a hearing or adjudication on said return had in like manner as if the seizure had been made upon a warrant therefor. [L. '37, Ch. 176, § 14. Approved and in effect March 18, 1937.]

3202.28. Replevin of narcotic drugs and other property forbidden. No narcotic drugs, vessels, fixtures, furniture or other property seized by authority of any warrant issued under the provisions of this act shall be taken from the possession of the officer seizing the same under any replevin or other process. [L. '37, Ch. 176, § 15. Approved and in effect March 18, 1937.]

3202.29. Fines and costs a lien on real estate—leased premises—collection of fines and costs. All fines and costs assessed against any person for any violation of any of the provisions of the laws of this state relating to narcotic drugs, shall be a lien upon the real estate of such person until paid; and in case any person shall let or lease any building or premises, and shall knowingly suffer the same to be used and occupied for the manufacture or sale of narcotic drugs, the premises so leased and occupied shall be subject to lien for, and may be sold to pay all fines and costs assessed against any such occupant for any violation of this act; and such liens may be enforced by civil action in any court having jurisdiction; provided, that the person against whom such fines and costs are assessed shall be committed to the jail of the county until such fines and costs are paid. [L. '37, Ch. 176, § 16. Approved and in effect March 18, 1937.]

3202.30. Persons and corporations exempted—when possession not unlawful. The provisions of this act restricting the possessing and having control of narcotic drugs shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose or aiding public officers in performing their official duties. [L. '37, Ch. 176, § 17. Approved and in effect March 18, 1937.]

3202.31. Common nuisances. Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall, be deemed a common nuisance. No person shall keep or maintain such a common nuisance. [L. '37, Ch. 176, § 18. Approved and in effect March 18, 1937.]

3202.32. Narcotic drugs to be delivered to state officials—forfeiture and destruction—delivery to board of health—to hospitals—record of receipt and disposition by board of health secretary. All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States commissioner of narcotics, by the officer who destroys them.

(b) Upon written application by the secretary of the state board of health, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said secretary of the state board of health, for distribution or destruction, as hereinafter provided.

(c) Upon application by any hospital within this state, not operated for private gain, the secretary of the state board of health may in his discretion deliver any narcotic drugs that have come into his custody by authority of this section to the applicant for medicinal use. The secretary of the state board of health may from time to time deliver excess stocks of such narcotic drugs to the United States commissioner of narcotics, or may destroy the same.

(d) The secretary of the state board of health, shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities, and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered, and destroyed; and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal or state officers

charged with the enforcement of federal and state narcotic laws. [L. '37, Ch. 176, § 19. Approved and in effect March 18, 1937.]

3202.33. Notice of conviction to be sent to licensing board—license revocation—reinstatement. On the conviction of any person of the violation of any provision of this act, a copy of the judgment and sentence, and of the opinion of the court or magistrate, if any opinion be filed, shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the conviction of any such person, the court may, in its discretion, suspend or revoke the license or registration of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, said board or officers may reinstate such license or registration. [L. '37, Ch. 176, § 20. Approved and in effect March 18, 1937.]

3202.34. Record confidential—open to official inspection. Prescriptions, orders, and records required by this act, and stocks of narcotic drugs, shall be open for inspection only to federal, state, county, and municipal officers, whose duty it is to enforce the laws of this state or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party. [L. '37, Ch. 176, § 21. Approved and in effect March 18, 1937.]

3202.35. Fraud or deceit in obtaining narcotic drugs—privileged communication—false statement—representations—false prescription—label—application of section. (1) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug, (a) by fraud, deceit, misrepresentation, or subterfuge; or (b) by the forgery or alteration of a prescription or of any written order; or (c) by the concealment of a material fact; or (d) by the use of a false name or the giving of a false address.

(2) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall wilfully make a false statement in any prescription, order, report, or record, required by this act.

(4) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person.

(5) No person shall make or utter any false or forged prescription or false or forged written order.

(6) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(7) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of section 8 [3202.21] of this act, in the same way as they apply to transactions under all other sections. [L. '37, Ch. 176, § 22. Approved and in effect March 18, 1937.]

3202.36. Exceptions and exemptions—negation not required to be negated—burden of proof. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provisions of this act, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this act, and the burden of proof of any such exception, excuse, proviso, or exemption, shall be upon the defendant. [L. '37, Ch. 176, § 23. Approved and in effect March 18, 1937.]

3202.37. Enforcement and cooperation. It is hereby made the duty of the secretary of the state board of health, its officers, agents, inspectors, and representatives, and of all peace officers within the state, and of all county attorneys, to enforce all provisions of this act, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states, relating to narcotic drugs. [L. '37, Ch. 176, § 24. Approved and in effect March 18, 1937.]

3202.38. Penalties. Any person violating any provision of this act shall upon conviction be punished, for the first offense by a fine not exceeding one thousand dollars (\$1,000.00) or by imprisonment in the county jail for not exceeding six (6) months or by both such fine and imprisonment, and for any subsequent offense, by a fine not exceeding five thousand dollars, (\$5,000.00) or by imprisonment in the state prison for not exceeding five (5) years, or by both such fine and imprisonment. Any

person who sells, barter, exchanges, distributes, gives away, or in any manner disposes of any of the drugs in violation of the provisions of this act, to any person of the age of eighteen (18) years, or under, shall upon conviction be punished by imprisonment in the state prison for not less than five years nor more than life. [L. '37, Ch. 176, § 25. Approved and in effect March 18, 1937.]

3202.39. Effect of acquittal or conviction under federal narcotic laws. No person shall be prosecuted for the violation of any provision of this act if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which it is alleged, constitutes a violation of this act. [L. '37, Ch. 176, § 26. Approved and in effect March 18, 1937.]

3202.40. Constitutionality. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [L. '37, Ch. 176, § 27. Approved and in effect March 18, 1937.]

3202.41. Interpretation. This act shall be so interpreted and construed as to effectuate its general purpose, to make uniform the laws of those states which enact it. [L. '37, Ch. 176, § 28. Approved and in effect March 18, 1937.]

3202.42. Repeals. That sections 3189, 3190, 3191, 3192, 3193, 3199, 3200, 3201, 3202, 3202.3, 3202.4, 3202.5, 3202.6, of the revised codes of Montana of 1935, be repealed together with all acts and parts of acts in conflict herewith. [L. '37, Ch. 176, § 29. Approved and in effect March 18, 1937.]

3202.43. Name of act. This act may be cited as the "Uniform Drug Act". [L. '37, Ch. 176, § 30. Approved and in effect March 18, 1937.]

CHAPTER 275

COSMETOLOGY AND HAIRDRESSING — REGULATION OF PRACTICE

Section

- 3228.1. License required to practice or teach cosmetology and provision for registration of schools of cosmetology.
3228.2. Definition—practice or teaching of cosmetology—itinerant cosmetologists.

Section

- 3228.3. Requirements for practicing or teaching cosmetology or operating a school of cosmetology—applicants—eligibility for examination—applicants for teacher's license—apprentice's license—temporary license to graduates as operators—certificates of registration of schools—requirements therefor—employment of licensed teachers—equipment—school term—attendance record—sanitation—revocation of certificate—rules and regulations—licensee suffering from communicable disease.
- 3228.4. Creation of state examining board of beauty culturists—term—appointment—qualifications.
- 3228.5. Annual meeting—officers to be selected.
- 3228.7. Registration—licenses.
- 3228.8. Examinations—operator's license—persons trained under state bureau of vocational rehabilitation.
- 3228.9. Compensation of members of board—salary of secretary.
- 3228.10. Bond of secretary-treasurer.
- 3228.11. Powers and duties of the board to refuse, revoke, or suspend licenses and the procedure therefor.
- 3228.13. Inspector of beauty parlors—salary and expense.
- 3228.15. Fees.
- 3228.16. Duration and renewal of licenses and certificates.
- 3228.17. Penalties.

3228.1. License required to practice or teach cosmetology and provision for registration of schools of cosmetology. That on and after the date on which this act goes into effect, no person shall practice or teach cosmetology without a license and no place shall be used or maintained for the teaching of cosmetology, for compensation, except under a certificate of registration issued in compliance with the requirements of this act. [L. '39, Ch. 222, § 1, amending R. C. M. 1935, § 3228.1. Approved and in effect March 17, 1939.

Section 15 repeals conflicting laws.

3228.2. Definition—practice or teaching of cosmetology— itinerant cosmetologists. The practice and teaching of cosmetology is defined to be and includes any or all work generally and usually included in the term "hairdressing" and "beauty culture" and performed in so-called hairdressing and beauty shops, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness and beautification of the hair, scalp, face, arms and hands. Provided, however, that itinerant cosmetologists shall not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes, in any regularly established store or place of business, holding a license from the state of Montana as such store or place of business. [L. '39, Ch. 222,

§ 2, amending R. C. M. 1935, § 3228.2. Approved and in effect March 17, 1939.

Section 15 repeals conflicting laws.

3228.3. Requirements for practicing or teaching cosmetology or operating a school of cosmetology—applicants—eligibility for examination—applicants for teacher's license—apprentice's license—temporary license to graduates as operators—certificates of registration of schools—requirements therefor—employment of licensed teachers—equipment—school term—attendance record—sanitation—revocation of certificate—rules and regulations—licensee suffering from communicable disease. Before anyone may practice or teach cosmetology, or any person, firm, or co-partnership, or corporation may operate a school of cosmetology, such person, firm, or co-partnership or corporation must obtain a license or certificate of registration from the state board as hereinafter provided. To be eligible to take the examination to practice cosmetology, the applicant must be not less than eighteen (18) years of age and a graduate of the eighth grade school, and must be of good moral character. Such applicant must have completed a continuous course of study of at least two thousand (2,000) hours in an accredited beauty school, which course of study has been distributed over a period of not less than ten (10) months or more than twelve (12) months, and has received a diploma from said beauty school. Such person so qualified must file with the secretary of the state board, a written application to take such examination accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the state board, and shall deposit with the secretary of the said board, the required examination fee and pass an examination as to his or her fitness to practice cosmetology. Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he or she must have a diploma from an accredited beauty school, and must also have a license to practice cosmetology, and must show that he or she has been actively engaged as a beauty operator for three (3) continuous years prior to taking said teachers' examination. Said applicant must qualify by filing an application as prescribed by the board and by taking and passing such examination as prescribed and given by the state board before a license shall issue. Such license must be renewed annually as herein provided.

Provided, however, that the state board may issue apprentice licenses to applicants who are at least eighteen (18) years of age, high school graduates and of good moral character. Such applicants must register with the secretary

of the state board before commencing the apprenticeship upon such form as the state board shall prescribe for such apprenticeship license. Such apprentice, after two (2) continuous years under a licensed cosmetologist, must take the state board examination for an operator's license. Provided, however, the board shall not issue more than one (1) apprenticeship license to a licensed beauty shop, excepting such shops as have five (5) or more licensed operators, in which case the number of apprentices shall be limited to one (1) apprentice for every five (5) operators or a fraction thereof.

Provided, further, the board may grant to graduates of accredited schools of this state upon the payment of a fee of two dollars (\$2.00) a temporary license authorizing such graduates to practice as an operator under the supervision of a licensed cosmetologist, in the practice of hairdressing and beauty culture, for a period of not to exceed ninety (90) days, or until the next examination is held by the board. No such temporary license shall be issued except upon the presentation by the applicant of a certificate of graduation from a registered school of the state of Montana, and such temporary licenses shall not be renewable.

No person, firm, or co-partnership, or corporation shall operate a school for the purpose of teaching cosmetology for compensation unless a certificate of registration has been first obtained from the state board. Application for such certificate shall be filed with such board on such form as the board shall prescribe.

No school for teaching cosmetology shall be granted a certificate of registration unless it complies, or can comply, with the following requirements:

(1) Have in its employ a licensed teacher who shall be, at all times, in the immediate supervision of the work of said school, or such other teachers as the state board may determine is necessary for the proper conduct of said school. Provided, however, that there shall not be more than twenty-five (25) students to each such teacher.

(2) It shall possess such apparatus and equipment as the state board may determine is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(3) It shall maintain a school term of not less than two thousand (2,000) hours extending over a period of ten (10) consecutive months, and shall prescribe a course of practical training and technical instructions equal to the requirements for state board examina-

tions, which course of training and technical instruction shall be prescribed by the state board.

(4) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(5) No owner, or person in charge of a school of cosmetology shall permit any person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, any room used, wholly or in part for a school of cosmetology.

(6) Certificates of registration may be refused, revoked, or suspended, as provided in section 3228.11, hereof.

(7) The state board shall have the power to prescribe such further rules and regulations as they deem necessary for the proper conduct of schools of cosmetology.

If a licensee shall contract a communicable disease, endangering the public health, the board shall, upon proof of same, cancel or suspend his or her license until such time as said licensee can secure a physician's certificate showing that such licensee is free from communicable disease. [L. '39, Ch. 222, § 3, amending R. C. M. 1935, § 3228.3. Approved and in effect March 17, 1939.

Section 15 repeals conflicting laws.

3228.4. Creation of state examining board of beauty culturists — term — appointment — qualifications. There is hereby created a state examining board which shall be called and styled "the Montana state examining board of beauty culturists", consisting of three members, each of whom shall be a hairdresser or cosmetologist, to be appointed by the governor, from a list of six persons recommended by the Montana state hairdressers' association. Each member hereinafter appointed shall serve four (4) years and until his or her successor is appointed. The members hereinafter appointed on said board must have been actively engaged in the profession of cosmetology for at least five (5) years prior to such appointment, and must have been a resident of the state of Montana for at least five (5) years prior to such appointment. No two members of the said board shall be members of or affiliated with any school of cosmetology. The board hereby created shall be referred to hereinafter as the "state board". Said board shall adopt a seal to authenticate its acts. [L. '39, Ch. 222, § 4, amending R. C. M. 1935, § 3228.4. Approved and in effect March 17, 1939.

Section 15 repeals conflicting laws.

3228.5. Annual meeting—officers to be selected. The state board shall annually, on or before the first of March of each year, elect from their number a president, vice-president, and secretary-treasurer. [L. '39, Ch. 222, § 5, amending R. C. M. 1935, § 3228.5. Approved and in effect March 17, 1939.]

Section 15 repeals conflicting laws.

3228.7. Registration—licenses. If the board finds that an applicant for examination, or for certificate of registration, has complied with the requirements of this act and has paid the required fee, the board shall admit such applicant to examination and shall issue a license or certificate of registration to those who have successfully passed such examination or are entitled to such certificate of registration in accordance with the provisions of this act. [L. '39, Ch. 222, § 6, amending R. C. M. 1935, § 3228.7. Approved and in effect March 17, 1939.]

Section 15 repeals conflicting laws.

3228.8. Examinations—operator's license—persons trained under state bureau of vocational rehabilitation. Examinations for operator's license shall be held at least two times a year and not more than five times a year and for teacher's license once each year, at a place and time specified by said board. Such examinations shall be conducted by said state board or by examiners appointed by a majority of said board for such purpose. Such examiners shall have had at least three years practical experience and shall be licensed cosmetologists and shall not be connected with any school of cosmetology in the state of Montana. The examinations shall not be confined to any specific method or system.

Provided that physically handicapped persons trained for cosmetology under the state bureau of vocational rehabilitation shall, for a period of one year immediately following their graduation, be exempted from this examination and the fees described in section 3228.15. Upon certification from the state supervisor of rehabilitation that a bureau beneficiary has successfully completed the required apprenticeship or training in a shop or beauty school, the secretary of the state board shall issue such person the necessary certificate or license to practice the profession in Montana. [L. '39, Ch. 222, § 7, amending R. C. M. 1935, § 3228.8. Approved and in effect March 17, 1939.]

Section 15 repeals conflicting laws.

3228.9. Compensation of members of board—salary of secretary. Each member of the board shall receive, as compensation for his or her services, the sum of ten dollars (\$10.00)

for each day's actual attendance at board meetings, not to exceed three consecutive days, and each member shall be reimbursed for his or her expenses necessarily incurred in the performance of his or her duties hereunder. All such compensation and necessary expenses shall be paid by the board out of the funds received by it and no part shall be paid by the state. The secretary of the state board shall receive an annual salary to be fixed by the board, and his or her necessary expenses actually incurred in the performance of official duties. Such secretary shall not receive, in addition to the salary herein provided, the per diem herein provided for attendance at board meetings. The state board may make reasonable provisions, for its expenses in the enforcement of this act, and for compensation and expenses of examiners; provided, however, that no payments shall be made by the board except upon a verified claim filed with the board and approved by the majority thereof, and by warrants signed by the president and secretary-treasurer of the board. [L. '39 Ch. 222, § 8, amending R. C. M. 1935, § 3228.9. Approved and in effect March 17, 1939.]

Section 15 repeals conflicting laws.

3228.10. Bond of secretary-treasurer. The secretary-treasurer of said state board shall give a corporate surety bond payable to the board, in the sum of five thousand dollars (\$5,000.00) approved by the said board, conditioned as the board may specify for the faithful performance of the duties of this office. Such bond shall have the oath of office endorsed thereon and shall be deposited with the president of the board, and kept in his or her office. [L. '39, Ch. 222, § 9, amending R. C. M. 1935, § 3228.10. Approved and in effect March 17, 1939.]

Section 15 repeals conflicting laws.

3228.11. Powers and duties of the board to refuse, revoke, or suspend licenses and the procedure therefor. The board shall have the power to refuse, refuse to renew, revoke, or suspend licenses as follows:

The board shall not issue, or having issued, shall not renew, or may revoke, or suspend, at any time any license as required by the provisions of this act, in any one of the following cases: (a) failure of a person, firm, copartnership or corporation operating a cosmetological establishment or school of cosmetology to comply with the requirements of this act; (b) failure to comply with the sanitary rules, adopted by the board and approved by the state board of health, for the regulation of cosmetological establishments or schools of cosmetology; (c) gross malpractice; (d) con-

tinued practice by a person knowingly having an infectious or contagious disease; (e) habitual drunkenness, or habitual addiction to the use of morphine or any habit-forming drugs; (f) permitting a certificate of registration or license to be used where the holder thereof is not personally, actively, and continuously engaged in business; (g) failure to display the license; provided, however, that the said board shall not refuse to issue or renew any license as required by the provisions of this act, or revoke or suspend any such license already issued, except upon ten (10) days' notice in writing to the interested parties, which notice shall contain a brief statement of the reasons for the contemplated action of the board and designate a proper time and place for the hearing of all interested parties before any final action is taken as hereinafter provided; provided, however, that due notice within the provisions of this section shall be deemed to have been given when the board shall have placed in a United States postoffice a copy of the notice as hereinabove provided, addressed to the designated or last known residence of the person applying for such license or to whom such license has already been issued; provided, further, that any person, firm, co-partnership or corporation whose license to do business as herein provided is revoked or suspended or who is refused a license or a renewal of a license already issued may commence an action in a court of competent jurisdiction against the state board of cosmetology for the purpose of cancelling or obtaining other relief from the act of the said board. All provisions of the code of civil procedure relating to pleadings, proofs, trials and appeals shall be applicable to such action. [L. '39, Ch. 222, § 10, amending R. C. M. 1935, § 3228.11. Approved and in effect March 17, 1939.]

Section 15 repeals conflicting laws.

3228.13. Inspector of beauty parlors—salary and expense. The state board of health, with the approval of the state board, shall appoint and may remove one or more inspectors who are licensed to practice under this act, each of whom shall devote his or her time to inspecting beauty parlors and performing such other duties connected therewith as the state board may direct. Such inspectors may enter any beauty parlor or school of cosmetology during business hours for the purpose of inspection, and the refusal of any licensee to permit such inspection during business hours shall be cause for revocation of such license. The salary of such inspectors shall be fixed by the state board and such salary and expenses shall be paid out of the funds of the

state board, and not otherwise, upon the presentation of a verified claim as hereinabove provided. [L. '39, Ch. 222, § 11, amending R. C. M. 1935, § 3228.13. Approved and in effect March 17, 1939.]

Section 15 repeals conflicting laws.

3228.15. Fees. Each applicant for examination to practice or teach shall pay, at the time of such application, a fee of ten dollars (\$10.00). Each person practicing cosmetology as an operator shall pay a fee of five dollars (\$5.00) for the issuance of a license, and a further fee of five dollars (\$5.00) annually for each renewal thereof. Each person teaching cosmetology shall pay a fee of five dollars (\$5.00) for the issuance of a license, and the further sum of five dollars (\$5.00) annually for each renewal thereof. Every person, firm, co-partnership, or corporation owning, operating, or conducting a school of cosmetology shall pay the sum of twenty-five dollars (\$25.00) for a certificate of registration therefor, and pay the further sum of twenty-five dollars (\$25.00) annually for each renewal thereof. Each applicant for apprentice license shall pay an annual fee of five dollars (\$5.00). Each applicant for itinerant license as a cosmetologist, shall pay a fee of twenty-five dollars (\$25.00). Such license fees shall be paid annually in advance to the secretary of the board. [L. '39, Ch. 222, § 12, amending R. C. M. 1935, § 3228.15. Approved and in effect March 17, 1939.]

Section 15 repeals conflicting laws.

3228.16. Duration and renewal of licenses and certificates. Licenses and certificates shall be issued for no longer than one year. All licenses and certificates shall expire on the 31st day of December next succeeding unless renewed for the next year. Licenses and certificates may be renewed by application made prior to the 31st day of December of each year, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under special rules adopted by the board. [L. '39, Ch. 222, § 13, amending R. C. M. 1935, § 3228.16. Approved and in effect March 17, 1939.]

Section 15 repeals conflicting laws.

3228.17. Penalties. Any person or persons who shall practice, teach, or operate a school of cosmetology or practice as an itinerant cosmetologist, as herein defined, without having first obtained the license or certificate of registration as required, and without complying with the provisions of this act, shall be guilty of a misdemeanor. All fines and penalties

shall be paid into the treasurers of the several counties for the use and benefit of the common school fund thereof. [L. '39, Ch. 222, § 14, amending R. C. M. 1935, § 3228.17. Approved and in effect March 17, 1939.]

Section 15 repeals conflicting laws.

CHAPTER 276

BARBERS AND BARBER SHOPS

Section

- 3228.19. Sanitation of barber shops, barber schools and barber colleges and definition of term "barber shop"—rules and regulations—who to make—certificate of registration—infectious diseases—revocation or suspension of registration.
- 3228.20. Practice of barbering defined.
- 3228.21. Licensing and registration of barbers, barber shops, barber schools and barber colleges—apprentice—definition—fee—statement for board of barber examiners—when may practice—barber schools—approval by board—regulations—shops and schools—license—application—barber's qualifications for shop license—requirements for shop, school, or college license—inspection of shops and schools—suspension or revocation of license—aggrieved applicant—appeal to district court.
- 3228.22. Present practitioners—shops and schools previously established.
- 3228.23. Display of certificate and license.
- 3228.27. Powers and duties—board of barber examiners—price agreements—minimum prices—price schedule—requirements to establish.
- 3228.28. Violations of act—penalties—licenses—suspension or revocation.
- 3228.29. Fees to be paid by apprentices, students, barbers and barber shops—individual barber license fee—failure to renew on time—renewal—penalty—physically handicapped persons—exemptions—inspection license fees—expiration date of licenses.
- 3228.30. Barbering without certificate of registration—operating shop or school without license—unlawful.
- 3228.31. Partial invalidity saving clause.

3228.19. Sanitation of barber shops, barber schools and barber colleges and definition of term "barber shop"—rules and regulations—who to make—certificate of registration—infectious diseases—revocation or suspension of registration. All barber shops, barber schools and barber colleges shall be operated and maintained in a sanitary condition so as to preserve the public health and prevent the spread of disease. The board of barber examiners and the state board of health of the state of Montana are hereby empowered to make and enforce all reasonable rules and regulations so as to preserve the public health and prevent the spread of disease. No barber,

or barber apprentice, shall receive a certificate of registration, nor a renewal of same, until he has presented to the board of barber examiners a physician's certificate showing him to be free of physical ailments that would tend to endanger the health of the public, and any person practicing barbering without a certificate of registration is guilty of a violation of this act.

(a) It shall be unlawful for any barber, barber apprentice or student of barbering to practice the occupation of a barber, or do any barber work while he has an infectious, contagious or communicable disease that would endanger the health of the public.

(b) If a barber, or barber apprentice, shall, after securing his certificate contract a communicable, infectious or contagious disease, endangering the public health, the board shall upon proof of same revoke or suspend his certificate of registration until such time as the board shall have satisfactory proof that such barber, or barber apprentice, is no longer afflicted with such communicable, infectious or contagious disease.

(c) The term "barber shop" as used herein is defined as a place where any person or persons carry on, engage in, practice or cause to be carried on, engaged in or practiced the business of barbering as the same is defined in chapter 127 of the session laws of the twenty-first legislative assembly of 1929 of the state of Montana [§ 3228.19 et seq.]. [L. '37, Ch. 183, § 1, amending R. C. M. 1935, § 3228.19. Approved and in effect March 18, 1937.]

Section 5 repeals conflicting laws.

1935. Laws regulating the practice of barbering are within the police power of the state. *State v. Bays*, 100 Mont. 125, 47 P. (2d) 50.

3228.20. Practice of barbering defined. Any one or any combination of the following practices, when done upon the human body for tonsorial purposes, and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

Shaving or trimming the beard.

Cutting the hair.

Giving facial or scalp massage, or treatment with oils, creams, lotions or other preparations, either by hand or mechanical appliances.

Singeing or shampooing the hair or applying hair tonic; or dyeing the hair of male persons;

Applying cosmetic preparations, antiseptics, powders, oils, lotions to scalp, face or neck. [L. '37, Ch. 183, § 2, amending R. C. M. 1935, § 3228.20. Approved and in effect March 18, 1937.]

Section 5 repeals conflicting laws.

3228.21. Licensing and registration of barbers, barber shops, barber schools and barber colleges — apprentice — definition — fee — statement for board of barber examiners — when may practice — barber schools — approval by board — regulations — shops and schools — license — application — barber's qualifications for shop license — requirements for shop, school, or college license — inspection of shops and schools — suspension or revocation of license — aggrieved applicant — appeal to district court. A. A person is qualified to receive a certificate of registration to practice barbering:

(1) Who has practiced as a registered apprentice for a period of eighteen (18) months under the immediate personal supervision of a registered barber; and who has passed a satisfactory examination conducted by the board of barber examiners to determine his or her fitness to practice barbering as defined by section 3228.20 as amended.

(2) Who is a graduate of a standardized school of barbering, (having a curriculum as adopted by the national educational council of barber examiners, and who has attended such school for the time prescribed herein and which school of barbering has been approved by the board of barber examiners of the state of Montana), and who has passed a satisfactory and practical examination conducted by the said board of barber examiners to determine his or her fitness to practice barbering.

(3) Who has served as an apprentice. An apprentice, for the purpose of this act, is a person who receives instruction in an approved barber school, or college, or from a barber authorized to practice barbering in the state of Montana.

Every apprentice must file with the board of barber examiners a statement in writing showing the name and place of business of his or her instructor, or school, the date of commencement of the apprenticeship, and the full name and age of said apprentice, and shall pay to the board of barber examiners a fee of three dollars (\$3.00), whereupon the board of barber examiners shall issue the said apprentice a card.

B. No registered apprentice may independently practice, or engage in the practice of barbering; provided, however, he may do any and all of the acts which constitute the practice of barbering when so done under the immediate personal supervision of a registered barber.

C. No school, or college, of barbering shall be approved by the board of barber examiners unless it teaches the curriculum of the standardized schools approved by the national

educational council of barber examiners. Students of said schools or colleges may, after attending such schools for a period of six (6) months, make application to the board of barber examiners for an apprenticeship certificate to practice barbering under the immediate personal supervision of a licensed barber for the period of one (1) year, after which time said students may then make application to take the examination for a barber's certificate of registration.

D. A barber shop, school or college must be conducted at a fixed place of establishment; no person or corporation shall open or maintain a barber shop, school or college, or hold himself or itself out as engaging in or conducting a barber shop, school or college, unless first licensed so to do by the board of barber examiners. Every barber school, or college, operating within the state of Montana must be in charge of a person who has had ten (10) years continuous experience as a barber, providing that the owner of such school, or college shall first secure from the board of barber examiners a permit to operate on payment of an annual license fee of fifty dollars (\$50.00), and shall keep said permit prominently displayed, and shall, before commencing business file with the secretary of state a bond to the state of Montana, which bond shall be approved by the attorney general, in the sum of two thousand (\$2,000.00) dollars conditioned upon the faithful compliance of said barber school, or college, with all the provisions of chapter 127, session laws of 1929 as amended [R. C. M. 1935, Ch 276]; and to pay all judgments that may be obtained against said schools, or colleges, or the owners thereof on account of fraud, misrepresentation or deceit practiced by them, or by their agents; provided, further, that all barber schools, or colleges shall keep prominently displayed a substantial sign as a barber school, or barber college. Provided, further, that all barber schools, or colleges, upon receiving students shall immediately apply to the board of barber examiners for student permits upon blank forms provided by the board of barber examiners for such purposes.

An application for a barber shop, school or college license shall be in writing and verified on a form provided by the board of barber examiners. Upon receipt of an application for a license hereunder, and upon payment of the initial inspection fee, said board of barber examiners shall cause an investigation and inspection to be made as to the character of the applicant, and upon proper notice and after proper hearing shall report its findings to the secretary of the board of barber examiners, who shall grant a license, if the board

of barber examiners finds that the applicant is of good character, and that the proposed barber shop, school or college is equipped and will be conducted as required by this act. Every application must be granted or refused within thirty (30) days from the date of filing of such application or within fifteen (15) days after the close of the hearing upon the application in case a hearing is held.

E. No barber shop license shall be issued in this state to anyone except one who holds a regular valid barber's certificate as provided for by this act, and no barber shop shall be maintained or conducted in this state except by one who holds a barber shop license issued by the board of barber examiners as provided by this act, and this certificate shall not be transferable as to person or place.

F. Before a license is issued to conduct a barber shop, school or college which shall be established in this state on or after the date this act goes into effect, such barber shop, school or college must be inspected and approved by the board of barber examiners and shall meet with the following requirements: (1) Must have both hot and cold running water connected with city water supply. In villages or towns where running water is not available, hot water tanks shall have not less than two (2) gallon capacity with gravity pressure. Waste water shall be disposed of through some system, carrying it away from the building. This shall be done by sewer connections, or in a manner meeting with the requirements of the state department of health rules and regulations, city ordinances, and having the approval of the city or village board of health, as required by law. (2) The head-rest of every barber chair must be equipped so that each customer will be supplied with clean fresh paper or towel before its use for any person. (3) Must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer. (4) Must have sufficient number of towels so that each customer will be served with a clean laundered towel. (5) Must be well lighted, well ventilated, and kept in a clean, orderly and sanitary condition at all times. (6) Must pay to the board of barber examiners the required fee.

G. All barber shops, barber schools or colleges shall be open for inspection at any time during business hours, to any member of the board, or its agents or assistants, and it shall be the duty of every owner or manager of a barber shop licensed under this act to make certain that each barber employed therein holds a certificate to practice barbering in Montana, and that all employees

observe the sanitary rules of the state department of health and the board of barber examiners and report to the board of barber examiners the name of any person practicing barbering therein, who has a communicable disease.

H. The board of barber examiners may either refuse to issue or renew, or may suspend or revoke any barber shop or barber school or college license for any one or combination of the following causes: (1) The violation of any of the provisions of subdivisions 1, 2, 3, 4, and 5 of subsection F of this section, subsection G of this section, and section 3228.23 of this act; (2) Conviction of a felony, shown by a certified copy of the record of the court of conviction; (3) Gross malpractice or gross incompetency; (4) Continued practice by a person knowingly having an infectious or contagious disease; (5) Advertising by means of knowingly false or deceptive statements; (6) Advertising, practicing or attempting to practice under a trade name other than one's own; (7) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs; (8) The commission of any of the offenses described in section 3228.27 of this act.

I. Any applicant whose license has been refused, suspended or revoked by the board of barber examiners under this act may within ten (10) days of such action file a petition in the district court in the county in which the applicant resides. The licensee shall be named as plaintiff and the board of barber examiners as defendant. Said court shall have jurisdiction after notice to the board of barber examiners to hear and determine said petition in a summary manner, and to reverse, vacate or modify the order of the board of barber examiners complained of, if upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable. The trial of the district court upon such an appeal shall be de novo. The decision of the board of barber examiners shall not be stayed by the proceedings on appeal and such appeal shall not operate to restore the right of the licensee to operate a barber shop pending such appeal. The attorney general shall defend said action of the board of barber examiners on behalf of the state; but the county attorney of the county where the petition is filed, at the request of the attorney general, shall appear and defend such action. [L. '39, Ch. 150, § 1, amending R. C. M. 1935, § 3228.21, as amended by L. '37, Ch. 183, § 3. Approved and in effect March 11, 1939.

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

3228.22. Present practitioners — shops and schools previously established. Any person engaged in the practice of barbering in this state at the time this act goes into effect, provided he furnish a satisfactory physician's certificate, approved by the state board of health, shall be granted a certificate of registration as registered barber without other examination, provided further that such person shall apply for a certificate on or before August 1, 1929.

Any barber shop, school or college established, maintained and operated in this state prior to the date this act goes into effect, provided its owner or manager furnish satisfactory evidence of compliance with the laws heretofore governing barber shops, schools or colleges in this state, shall be granted a license, provided further, that such owner or manager shall apply for such license and pay the required fee on or before May 31st, 1939. Any change in the ownership or management of a barber shop, school or college, on or after the date this act goes into effect, whether by sale or otherwise, shall render such barber shop, school, or college subject to all the provisions of section 3228.21 and section 3228.23 of this act. [L. '39, Ch. 150, § 2, amending R. C. M. 1935, § 3228.22. Approved and in effect March 11, 1939.]

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

1935.✓ Section 3228.22, exempting barbers from examination, before being granted a license, who were practicing in Montana when the barber act went into effect, while not exempting practicing barbers from other states, held not to violate either the fourteenth amendment of the United States constitution, or the constitution of Montana Art. 3, § 7, or Art. 5, § 26. *State v. Bays*, 100 Mont. 125, 47 P. (2d) 50.

3228.23. Display of certificate and license. Every holder of a certificate of registration shall display it in a conspicuous place, adjacent to or near his or her work chair.

Every license to operate a barber shop, school or college shall specify the name of the licensee and shall be kept in a conspicuous place in the barber shop, school or college. No barber shop, school or college shall be conducted or held forth as being conducted under any name except the name appearing as licensee on the license issued by the board of barber examiners.

Every barber shop shall display a schedule of prices in a conspicuous place. [L. '39, Ch. 150, § 3, amending R. C. M. 1935, § 3228.23. Approved and in effect March 11, 1939.]

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

3228.27. Powers and duties — board of barber examiners — price agreements — minimum prices — price schedule — requirements to establish. The board of barber examiners shall conduct practical examinations of applicants for certificates of registration to practice as registered barbers, not less than four (4) times each year at such times and places as the board of barber examiners may determine. Said examination shall cover the fundamentals of barbering, dermatology and sanitation. The board of barber examiners shall issue all certificates of registration. The board of barber examiners may, at its discretion, appoint inspectors with authority to inspect barber shops, their compensation to be the same as provided for members of the board of barber examiners while engaged in said duties.

The board of barber examiners shall have power to approve price agreements, establishing minimum prices for barber work, signed and submitted to the board of barber examiners by any organized group or groups of at least 75 per cent of the barbers in any city or town, within the state of Montana, should the board of barber examiners, after ascertaining by such investigations and proofs as the condition permits and requires, find that such price agreement is just and under varying conditions will best protect the public health and safety by affording a sufficient minimum price for barber work to enable the barbers to furnish modern and healthful services and appliances so as to minimize the danger to the public health incident to such work. For the purpose of this act, a city or town shall be deemed to include, in addition to the territory within its legal limits, the territory adjacent to it and lying within three miles of said legal limits. In determining whether any such price agreement is just and will best protect the public health and safety, the board shall take into consideration all conditions affecting the barber business in its relation to the public health and safety.

In determining reasonable minimum prices the board of barber examiners shall take into consideration the necessary cost incurred in the city or town in maintaining a barber shop in a clean, healthful and sanitary condition.

The board of barber examiners, after making such investigation, shall fix by official order the minimum price for all work usually performed in a barber shop within the city or town in which such price agreement has been signed. The board of barber examiners may upon the petition of 50% of the barbers of the said city or town readjust the minimum prices and such new prices must be approved by 75% of the barbers in the city or town

providing that any apprentice barber shall charge not less than 50% of the approved price in the said city or town. Provided, further, that this section shall not apply to students who have been enrolled less than six months in any barber college in the state of Montana or until they become apprentice barbers.

The board of barber examiners shall have authority to make necessary rules and regulations for the administration of the provisions of this act not inconsistent with this act nor the laws of the state. [L. '39, Ch. 150, § 4, amending R. C. M. 1935, § 3228.27. Approved and in effect March 11, 1939.

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

3228.28. Violations of act — penalties — licenses — suspension or revocation. Any person practicing the occupation of a barber without first having obtained a license, as provided in this act, or any person knowingly employing a barber who has not obtained such a license, or any person who falsely pretends to be qualified to practice such occupation under this act, and any person who violates any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than two hundred (\$200.00) dollars, or imprisonment in the county jail for not less than ten (10) days nor more than ninety (90) days, or both. In addition to the penalty hereinbefore prescribed, the board of barber examiners may, after hearing, suspend or revoke any barber's certificate of registration, or license to operate a barber shop, school or college, or both by reason of any person wilfully violating this act or persistently failing to conform to the lawful rules and regulations promulgated by the board of barber examiners. [L. '39, Ch. 150, § 5, amending R. C. M. 1935, § 3228.28. Approved and in effect March 11, 1939.

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

3228.29. Fees to be paid by apprentices, students, barbers and barber shops—individual barber license fee—failure to renew on time—renewal—penalty—physically handicapped persons—exemptions—inspection license fees—expiration date of licenses. A. The fee to be paid by an applicant for an examination to determine his or her fitness to receive a certificate of registration to practice barbering as defined in this act, shall be fifteen (\$15.00) dollars, and for the issuance of said certificate an additional three (\$3.00) dollars.

The fee to be paid by an apprentice or student for a certificate of registration shall be the sum of three (\$3.00) dollars.

B. Each person registered as a barber, or barber apprentice, shall on or before the first day of July of each year pay a license fee of three (\$3.00) dollars for the renewal of his or her certificate of registration, and if any barber, or barber apprentice, shall fail to have such certificate renewed on or before the first day of August of each year such barber, or barber apprentice, shall upon the renewal of said certificate of registration pay a penalty, or a restoration fee, of five (\$5.00) dollars, in addition to the regular fee of three (\$3.00) dollars provided for herein, and if a certificate of registration is not renewed within one year after date of expiration thereof, such barber, or barber apprentice, shall not be entitled to have such certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for by this section. Provided, further, however, that physically handicapped men and women, trained for the barber profession by the state bureau of civilian rehabilitation and certified by that department as having successfully completed a six (6) months course in a reputable barber college will not be required to pay any fees, but will for a period of one (1) year immediately following their training be exempted from all except the sanitary provisions of the barber act, or any of its amendments, and provided, further, that no other or additional license, or fee, shall be imposed upon barbers, or barber apprentices, by any municipality or other subdivision of the state of Montana.

E. In addition to the fees and charges now provided by existing law, all barber shops heretofore established, and which have been under the inspection of the board of barber examiners, shall pay an annual license fee of one (\$1.00) dollar. Barber shops hereafter established shall pay an initial inspection license fee of fifteen (\$15.00) dollars for the first year or portion thereof, and shall pay an annual license fee of one (\$1.00) dollar for each calendar year thereafter.

F. All barber shops, schools or college licenses shall expire on the 31st day of May of each year, following the issuance of said license, and every owner or manager of a barber shop, school or college which continues in active operation shall annually, on or before May 31st renew his barber shop, school or college license and pay the required fee.

Every barber shop, school or college license which has not been renewed during the month of May in any year shall expire on the 31st

day of May in that year, and for the restoration of an expired barber shop license the fee shall be ten (\$10.00) dollars, and for an expired barber school or college license, the fee shall be fifty-five (\$55.00) dollars. [L. '39, Ch. 150, § 6, amending R.C.M. 1935, § 3228.29, as amended by L. '37, Ch. 183, § 4. Approved and in effect March 11, 1939.

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

3228.30. Barbering without certificate of registration—operating shop or school without license—unlawful. After June 1, 1939, no person shall practice or attempt to practice barbering or serve or attempt to serve as a barber apprentice without first having received from the board of barber examiners a certificate of registration.

After June 1, 1939, it shall be unlawful to operate a barber shop, school or college unless it has first been duly licensed by the board under the provisions of this act. [L. '39, Ch. 150, § 7, amending R. C. M. 1935, § 3228.30. Approved and in effect March 11, 1939.

Section 8 is partial invalidity saving clause.

Section 9 repeals conflicting laws.

3228.31. Partial invalidity saving clause. If any portion of this act is declared unconstitutional by a court of competent jurisdiction, it shall not affect the validity of the remainder of the act which can be given effect without the invalid portion. [L. '39, Ch. 150, § 8, adding new section. Approved and in effect March 11, 1939.

Section 9 repeals conflicting laws.

CHAPTER 278

PUBLIC ACCOUNTING—REGULATION OF PRACTICE

Section

3241.1. Certified public accountants—issuance of certificate without examination—examination—qualifications of applicants.

3241.1. Certified public accountants—issuance of certificate without examination—examination—qualifications of applicants. The certificate of "certified public accountant" shall be granted by the state university of Montana (hereinafter referred to as the university) to any person who is (a) a citizen of the United States or who has duly declared his or her intention of becoming such citizen, and who is and has been a resident of the state of Montana for at least one (1) year prior to the date of his application, and (b) who is over the age of twenty-one (21) years, and (c) who is of good moral character, and

(d) who is a graduate of a high school with a four (4) years' course or has had an equivalent education, or who, in the opinion of the board, has had sufficient commercial experience in accounting so that, in the judgment of the board, the requirement of a four-year high school course or equivalent education may be waived, and (e) who shall have successfully passed examinations in the theory and practice of general accounting, in auditing, in commercial law as affecting accountancy, and in such other related subjects as the board of accountancy may deem advisable. [L. '37, Ch. 106, § 1, amending R. C. M. 1935, § 3241.1. Approved and in effect March 15, 1937.

Section 2 repeals conflicting laws.

CHAPTER 279A

PHOTOGRAPHY—REGULATION OF PRACTICE

Section

- 3252.1.** Definitions.
- 3252.2.** Creation of board of examiners in photography — members — number — terms — qualifications.
- 3252.3.** Board — organization — officers — rules and regulations—quorum—officers' duties —meetings — compensation — employees —fees and other revenue—photographers' license fund—disposal of balances.
- 3252.4.** Licenses — examinations—fees—temporary certificates — rules — apprentices — discretion of board.
- 3252.5.** Licenses — examinations — forms — different branches of photography and certificates.
- 3252.6.** Board — reports to governor — members — removal.
- 3252.7.** Application to practice — filing—examination fee—evidence of competency—issue of license — transferability — practice under assumed name—second examination—fee—further examination.
- 3252.8.** Licensee—recording—display.
- 3252.9.** Fees — business — employee — when payable—what covered—notice to pay—reinstatement fee.
- 3252.10.** License — revocation — grounds — notice —hearing—evidence—filing.
- 3252.11.** Practitioners when act effective—license—qualifications—proof.
- 3252.12.** When practice illegal without license—what constitutes practicing.
- 3252.13.** Violation of act—penalty.
- 3252.14.** Persons exempted from act.
- 3252.15.** Saving clause.

3252.1. Definitions. (a) Photography is defined to be:

1. The production of pictures by the action of light on prepared sensitive surfaces;

2. The processes of projecting and registering images by means of lens and camera upon sensitized materials, development and

fixation of the latent image to render same visible and permanent, and the subsequent reproduction or transfer of such image, either negative or positive, upon other sensitized material by aid of light and chemical action.

(b) The practice of photography is defined to be the business or profession, occupation or avocation of taking or producing photographs, or any part thereof, for hire. [L. '37, Ch. 37, § 1. Approved February 19, 1937.]

3252.2. Creation of board of examiners in photography — members — number — terms — qualifications. The board of examiners in photography is hereby created. Said board shall consist of five (5) members, to be appointed by the governor. Each of said members shall have been engaged in the practice of photography in the state for not less than five (5) years next preceding his appointment. The terms of the members first appointed shall be, one (1) for five (5) years; one (1) for four (4) years; one (1) for three (3) years; one (1) for two (2) years; and one (1) for one (1) year. Thereafter the term of each member shall be for five (5) years. [L. '37, Ch. 37, § 2. Approved February 19, 1937.]

3252.3. Board — organization — officers — rules and regulations — quorum — officers' duties — meetings — compensation — employees — fees and other revenue — photographers' license fund — disposal of balances. (a) Within thirty (30) days after the appointment of the members thereof, the board shall organize by electing one (1) of its members as president, one (1) as vice-president, and one (1) as secretary and treasurer. The board shall make such rules and regulations as may be necessary to the performance of its duties. A majority of the board shall constitute a quorum.

(b) It shall be the duty of the president to preside at all meetings. In the absence or incapacity of the president, the vice-president shall assume his duties. It shall be the duty of the secretary-treasurer to keep a record of all proceedings of the board, which shall be open at all times to public inspection. He shall have custody of all funds and shall hold, use or expend such funds only in the manner hereinafter provided. He shall give such surety bond as the board shall from time to time prescribe, in not less than double the amount of money he would hold at any one time, and the premium shall be a charge against the board.

(c) The board shall hold public meetings at least once each year and as often and at such places as it may deem necessary.

(d) Each member of the board shall receive as compensation five dollars (\$5.00) for each day actually in session or actively engaged in the duties of the board or of his office, and actual necessary traveling expenses and hotel bills when in session. In addition, the secretary-treasurer shall be allowed an annual expense account not to exceed one hundred dollars (\$100.00) for stenographic assistance.

(e) The secretary-treasurer shall transmit to the state treasurer all fees or other revenue received by the board. The state treasurer shall place ten per cent (10%) thereof in the general fund to assist in defraying the cost of the maintenance of the state government, and shall place the remainder in a separate fund to be known as "The Photographers' License Fund", to be used only in defraying the expenses of the board and in the prosecution of violations of this act. Any other provision of law notwithstanding, the unexpended balance remaining in said photographers' license fund as of the end of the fiscal year shall not revert to the general fund but shall be credited to said fund for the succeeding fiscal year. The board shall never incur any expense nor approve any claim against said fund in excess of the balance therein, nor shall the state auditor issue any warrant against said fund in excess of said balance. [L. '37, Ch. 37, § 3. Approved February 19, 1937.]

3252.4. Licenses — examinations — fees — temporary certificates — rules — apprentices — discretion of board. (a) The board shall have authority to examine applicants who desire to practice photography in the state; to collect fees for such examinations, and to issue certificates of registration and license to practice photography to such as qualify as to competency, ability and integrity. The board shall adopt rules for the issuance of temporary certificates pending an examination, which shall be null and void after the next ensuing examination by the board. For the advancement of the profession, the board shall also provide for temporary certificates to apprentices.

(b) In giving examinations, the board may take testimony, under oath, which may be administered by any member, as to technical qualifications or the business record of the applicant, and the board may, at its discretion, for sufficient reason, grant or withhold a license to practice. [L. '37, Ch. 37, § 4. Approved February 19, 1937.]

3252.5. Licenses — examinations — forms — different branches of photography and certificates. The board shall provide three forms of technical examinations, covering respectively portrait, commercial work, and kodak

or amateur finishing, and shall provide separate certificates for each such branch of photography. A certificate for any one branch shall not permit practice of the other branches, but a person may hold certificates in all three branches. An applicant may take the examination in one or more such branches of photography, and if taken at the same meeting of the board, one examination fee shall suffice. [L. '37, Ch. 37, § 5. Approved February 19, 1937.]

3252.6. Board — reports to governor — members — removal. (a) The board shall make an annual report of its proceedings to the governor, not later than the fifteenth (15th) day of December of each year, which report shall contain an account of all moneys received and disbursed, from what source received, and for what purpose paid out.

(b) After a full and complete hearing of charges, the governor, on a majority vote of the remaining members and himself, may remove any member of the board for continued neglect of duty, incompetency, or unlawful or dishonorable conduct. [L. '37, Ch. 37, § 6. Approved February 19, 1937.]

3252.7. Application to practice — filing — examination fee — evidence of competency — issue of license — transferability — practice under assumed name — second examination — fee — further examination. (a) Every person desiring to commence the practice of photography in this state after this act takes effect, shall file an application, under his true name, for a license to so practice, together with an examination fee of twenty-five dollars (\$25.00), with the secretary of the board. He shall appear before the board for examination within six (6) months, and present such references and credentials as the board may require, and shall give satisfactory evidence as to competency and fitness to practice photography, based on technical knowledge and business integrity.

(b) If the applicant successfully passes the examination, he shall be registered by the board as a qualified photographer and receive a license signed by each member, authorizing him to practice photography. Such license shall not be transferable.

(c) No company, firm, corporation or association shall practice photography under an assumed or fictitious name, unless the name of the concern, together with the name of each person working under such name, or in any way associated with such concern who shall in all cases be a resident of Montana, shall be prominently and continuously displayed in the place of business of such concern. Said sign shall be conspicuously printed in plain type

in the English language, on a card not less than twelve (12) by fourteen (14) inches, and shall be framed under glass.

(d) Fees paid for examinations shall in no case be refunded, but an applicant who fails in the first examination may take a subsequent examination in branches in which he failed, and the fee for such re-examination shall be ten dollars (\$10.00). Should the applicant again fail, and desire to again come before the board for a third examination, he may make application as in the first instance, accompanied by the regular examination fee of twenty-five dollars (\$25.00). [L. '37, Ch. 37, § 7. Approved February 19, 1937.]

3252.8. Licensee — recording — display. Each recipient of a license to practice photography shall record the same in the office of the county recorder of the county in which he practices photography, and shall keep such license conspicuously displayed in his camera room. [L. '37, Ch. 37, § 8. Approved February 19, 1937.]

3252.9. Fees — business — employee — when payable — what covered — notice to pay — reinstatement fee. (a) Every person licensed to practice photography, who maintains an established place of photographic business, and who is not merely an employee of an established business, shall pay an annual fee of five dollars (\$5.00) for an establishment license.

(b) Every person licensed to practice photography, who is an employee of an established photographic business, shall pay an annual license fee as follows:

1. If employed in the portrait or commercial branch of photography, three dollars (\$3.00);

2. If employed in kodak or amateur finishing, two dollars (\$2.00).

(c) All fees shall be paid to the secretary on or before July first (1st), and he shall give a receipt for the same.

(d) The annual establishment fee shall include the issuance of certificates covering portrait, commercial, and kodak or amateur finishing when issued to the same person, provided he is qualified to hold the same. The annual employee fee shall cover issuance of all three certificates if applicant is qualified to hold same.

(e) The secretary shall notify every licensee, at his last known address, that his license fee is due on July first (1st) of each year after this act takes effect, and that his license will be revoked unless said fee is paid in full on or before October first (1st) of the same year, and thirty (30) days prior to said

date shall send a second notice to all who have failed to make payment.

(f) A photographer whose license is revoked for non-payment of the annual fee may make application to the secretary for reinstatement, accompanied by a fee of ten dollars (\$10.00), and if the board shall find the applicant to be guilty of no violation of this act other than default in payment of annual dues, he may be immediately reinstated. [L. '37, Ch. 37, § 9. Approved February 19, 1937.]

3252.10. License — revocation — grounds — notice — hearing — evidence — filing. The board shall have power to revoke the license of any photographer found guilty of fraudulent practices, or of willful misrepresentations, or for professional inactivity within the state for a period of one (1) year, unless given further time by the board, or who is convicted of a crime involving moral turpitude. Before any license shall be so revoked, the licensee shall be given notice in writing, mailed to his last known address, advising him of the charges, and at a date and place specified in said notice, not less than ten (10) days after service thereof, he shall be given a public hearing, and shall have the right to be represented by counsel and to present testimony in his behalf. In the conduct of any such hearing the board shall be governed by the usual rules of evidence, and all testimony shall be taken and a record of the hearing made and filed with the secretary of the board. [L. '37, Ch. 37, § 10. Approved February 19, 1937.]

3252.11. Practitioners when act effective — license — qualifications — proof. The board shall issue a license certificate to every photographer lawfully engaged in the practice of photography in the state, at the time this act takes effect, upon receipt of an application accompanied by the fee prescribed by section 9, which fee shall be deemed to be payment in full to July first (1st), 1938. Engagement in the lawful practice of photography shall be proven by the possession of a city license, issued prior to the date of passage of this act, in cities requiring city licenses, or in localities where city licenses are not required, by an affidavit signed by at least five (5) taxpayers, declaring the applicant to be engaged in the lawful practice of photography for profit, and permanently located. A resident photographer so entitled to a certificate shall make application therefor, accompanied by the proper fee, within thirty (30) days after notification by the secretary. Failure to do so shall act to forfeit the right to a certificate without examination. [L. '37, Ch. 37, § 11. Approved February 19, 1937.]

3252.12. When practice illegal without license — what constitutes practicing. (a) From and after thirty (30) days following the organization of the board, and notification by the board of the requirements of this act with respect to the filing of application for license, it shall be unlawful for any person or firm not licensed as prescribed herein to practice photography, either directly or indirectly, or by agent or employee, or for any person representing himself to be qualified to practice photography in the state.

(b) A person shall be regarded as practicing photography who is a manager, proprietor or conductor of a place in which photographs are made and offered for sale. [L. '37, Ch. 37, § 12. Approved February 19, 1937.]

3252.13. Violation of act — penalty. Any person who shall practice, or attempt to practice, photography in the state, without first having complied with the provisions of this act, or who shall violate any provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine for each offense, of not less than fifty (50) nor more than two hundred (\$200) dollars, or by imprisonment in the county jail not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment. Each sale shall be a separate offense. [L. '37, Ch. 37, § 13. Approved February 19, 1937.]

3252.14. Persons exempted from act. Nothing in this act shall be construed to apply:

(a) To a person in the employ of any newspaper or periodical publication, provided the negatives or photographs made by such person are not sold or offered for sale, or otherwise disposed of in this state for profit;

(b) To a person who shall make negatives or photographs for experimental purposes or for his or her own personal use or pleasure, provided such negatives or photographs are not sold or offered for sale in this state;

(c) Nor to a person who is in the employ of any school, college, or institution maintained by the state of Montana, who shall make negatives or any reproduction therefrom solely for the use of said school, college or institution, for educational or scientific purposes;

(d) To a licensed physician or dental practitioner who shall make negatives or photographs for clinical purposes;

(e) To motion picture operators in making motion pictures;

(f) To X-ray, blue print, photostatic or motion picture operators. [L. '37, Ch. 37, § 14. Approved February 19, 1937.

3252.15. Saving clause. If any part or provision of this act shall for any reason be adjudged by a court of competent jurisdiction to be invalid, the remainder thereof shall not thereby be invalidated, impaired, or affected. [L. '37, Ch. 37, § 15. Approved February 19, 1937.

CHAPTER 281

THE LIVESTOCK SANITARY BOARD AND STATE VETERINARY SURGEON — QUARANTINE, INSPECTION AND DESTRUCTION OF DISEASED STOCK

Section

3268.1. Rules and regulations—agreement with federal government—powers of live stock sanitary board.

3277. Sale of condemned carcasses—disposal of proceeds—deduction from owner's claim.

3268.1. Rules and regulations — agreement with federal government — powers of live stock sanitary board. Whenever it is determined by the livestock sanitary board that it is necessary to eradicate or control any infectious, contagious, communicable or dangerous disease of livestock in the state, in cooperation with the United States bureau of animal industry or other federal agency and to appraise and destroy animals affected with, or which have been exposed to such disease, or to destroy property in order to remove the infection and complete the cleaning and disinfection of the premises, or to do any act or incur any other expense reasonably necessary in suppressing such disease, the board may accept and adopt on behalf of the state, the rules and regulations adopted by the United States bureau of animal industry or other federal agency under authority of an act of congress, or such portion thereof deemed necessary, suitable or applicable, and adopt such other rules and regulations as it deems necessary or desirable for this purpose, and to cooperate with the United States bureau of animal industry or other federal agency in the enforcement of such rules and regulations so accepted and adopted. [L. '37, Ch. 177, § 2. Approved and in effect March 18, 1937.

Section 3 repeals conflicting laws.

3277. Sale of condemned carcasses — disposal or proceeds — deduction from owner's claim. Where a carcass or carcasses of animals

ordered destroyed by this act are found, upon official post-mortem inspection, to be fit for human consumption, the owner shall receive the net proceeds from the sale of such carcass or carcasses, which proceeds shall be deducted from his claim against the state and county on account of such slaughter. The representative of the livestock sanitary board, may, when considered advisable or necessary or when it is desired by the owner, proceed to sell the carcass or carcasses upon such terms as shall to him seem to the best interests of the state, and the net proceeds obtained therefrom shall be paid to the owner, but such procedure shall not invalidate the owner's claim for indemnity for any balance due him as provided by law. [L. '37, Ch. 177, § 1, amending R. C. M. 1935, § 3277. Approved and in effect March 18, 1937.

Section 3 repeals conflicting laws.

CHAPTER 284

BUTCHERS AND MEAT PEDDLERS — REGULATION

Section

3298.19. Inspection of hides before disposal -- exhibition to inspector of hides or bill of sale.

3298.19. Inspection of hides before disposal — exhibition to inspector of hides or bill of sale. Every person or persons, firm, corporation or association, slaughtering cattle for their own use, must before selling, destroying or otherwise disposing of the hide or hides from such cattle, have the same inspected by an officer authorized to make such inspection and secure a certificate of inspection as hereinbefore provided for. It shall be unlawful for any person or persons, firm, corporation, or association to sell, offer for sale, destroy or otherwise dispose of any hide or hides from slaughtered cattle which have not been inspected and identified by an authorized inspector. And it shall be the duty of any person or persons, firm, corporation, or association slaughtering cattle, for his own use or otherwise, upon demand of an authorized inspector, to exhibit the hide or hides of such animal or animals for inspection or duplicate bill of sale issued by a hide buyer, or some evidence of inspection by an authorized inspector. [L. '39, Ch. 47, § 1, amending R. C. M. 1935, § 3298.19. Approved and in effect February 21, 1939.

Section 2 repeals conflicting laws.

CHAPTER 285

RECORDING OF MARKS AND BRANDS— VENTING BRANDS—MORTGAGES OF LIVESTOCK

3300. Venting brands.

1938. In a prosecution for horse stealing an instruction embodying the substance of section 3300 was properly refused since, in a prosecution for larceny it is not necessary to show title to the subject of the larceny so far as the record ownership is concerned. *State v. Akers*, 106 Mont. 43, 74 P. (2d) 1138.

1938. The purpose of section 3300 is to protect persons in their honest dealing with livestock. *State v. Akers*, 106 Mont. 43, 74 P. (2d) 1138.

CHAPTER 287

INSPECTION OF HORSES AND CATTLE BEFORE REMOVAL FROM STATE

Section

3321. Inspection of cattle to be removed from state—inspection at destination—when permitted.
3322. Duties of stock inspector—report—certificate of inspection—when withheld.
- 3322.1. Fees for inspection—disposition of fees collected.
3323. Penalty for violation of act—fines—disposition.

3321. Inspection of cattle to be removed from state—inspection at destination—when permitted. It shall be the duty of any and all persons removing or taking from this state in any manner whatsoever, any cow, ox, bull, stag, heifer, steer, calf, horse or mule, immediately before the shipment of same, or its removal, and at the time and place from which said shipment is to be made, to cause the same to be inspected by a stock inspector of the state as hereinafter provided; provided, however, that whenever any of the class of stock aforementioned shall be loaded for shipment with any railroad company and consigned to any point where the state board of stock commissioners maintain a stock inspector, then and in such event only, such shipments so consigned, need not be inspected in this state before shipment. [L. '37, Ch. 136, § 1, amending R. C. M. 1935, § 3321. Approved and in effect March 16, 1937.

3322. Duties of stock inspector—report—certificate of inspection—when withheld. On receiving notice from any person that he desires to remove from this state to be sold or used outside of the state any of the class of animals mentioned in the preceding section, it shall be the duty of any stock inspector to whom such is given, to inspect said animals, carefully noting all of the brands and marks

upon same, and make a report of such inspection to the secretary of the board of stock commissioners, which said report shall show the date of such inspection, the name and address of the person taking said animals from the state, the destination of the shipment, the marks and brands upon each animal together with the number of animals listed under each brand; and if in the opinion of the stock inspector the person proposing to remove the same, is rightfully in possession of the animals inspected, he shall grant such persons a certificate of inspection, containing the matter herein provided, with the further statement that permission is granted said person to remove such animals from the state. The person receiving said certificate must, if shipment is made by railroad, deposit it with the railroad agent at the point from which said shipment was made, which certificate must be filed by the agent and must be at all times during business hours accessible to the public, and the agent must at the time of filing said certificate indorse upon it the date of its receipt and filing by him; if shipment is made other than by railroad, the person receiving said certificate must retain the same until the animals are sold or delivered, after which, it shall be forwarded to the livestock commission with a verified statement attached thereto, showing the name and address of the person, firm or corporation to whom the animals were sold or delivered. If, however, any stock inspector making such inspection shall be in doubt as to whether any of said stock is rightfully in possession of the person proposing to remove same from this state, he shall withhold such inspection certificate until satisfied that the said shipper is in rightful possession of such stock. [L. '37, Ch. 136, § 2, amending R. C. M. 1935, § 3322. Approved and in effect March 16, 1937.

3322.1. Fees for inspection—disposition of fees collected. For the service of inspection herein provided for, the officer making such inspections shall receive twenty-five cents (25c) per head for the inspection of twelve head or less, or three dollars per day for the inspection of more than twelve head, and shall receive in addition thereto, his necessary actual expenses, to be paid by the person for whom the inspection is made, in the case of cattle or horses shipped to points other than those markets where the Montana livestock commission maintains a stock inspector. For the service of inspection herein provided for at points not within the state where the livestock commission maintains a stock inspector the fee authorized by the packers and stock yards act, 1921, (U. S. C., Title 7, Sec. 181-229), may be collected by the stock inspector mak-

ing such inspection. All fees so collected shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the livestock commission fund. [L. '39, Ch. 87, § 1, amending § 3322.1, added by L. '37, Ch. 136, § 3. Approved and in effect March 1, 1939.

Section 2 repeals conflicting laws.

3323. Penalty for violation of act — fines — disposition. Any person removing or attempting to remove any livestock of the kind named in section 3321 of this code, without first having received the certificate of inspection and removal herein provided for, and any railroad, other carrier or person accepting for shipment any such livestock, without compelling the shipper to first give satisfactory evidence of his having received an inspection and removal certificate as herein provided, and any person refusing to exhibit such certificate upon proper demand, and any person who shall load any of such stock for shipping and consign same to any point where the livestock commission maintains a stock inspector, and who shall then reconsign them en route to any other points, so as to avoid inspection at point of shipment, and also the official inspection at the cities heretofore mentioned where such inspection is maintained, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or shall be punished by both such fine and imprisonment. All fines assessed and collected under the provisions of this act, fifty (50%) per cent thereof shall be turned into the state treasury, and placed to the credit of the livestock commission fund and fifty (50%) per cent to the credit of the county in which the livestock shipment originated or from which the livestock were taken, except that all fines collected where arrest is made by highway patrolmen, or upon information furnished by highway patrolmen, in which event, fifty (50%) per cent of such fines be deposited to the credit of the general fund of the county from which the livestock shipment originated or from which the livestock were taken, and the other fifty (50%) per cent be paid into the state treasury to be placed to the credit of the highway patrol revolving fund. [L. '37, Ch. 136, § 4, amending R. C. M. 1935, § 3323. Approved and in effect March 16, 1937.

Section 5 repeals conflicting laws.

CHAPTER 288

INSPECTION OF LIVESTOCK BEFORE REMOVAL FROM ONE COUNTY TO ANOTHER

Section

- 3324. Inspection of livestock — shipments other than by railroad.
- 3324.1. Loading and unloading livestock for inspection—place — county commissioners may designate.
- 3326.1. Fees for inspection.
- 3327. Penalty for violation of act—disposition of fines.

3324. Inspection of livestock — shipments other than by railroad. From and after the passage of this act, it shall be the duty of any and all persons, associations or corporations removing or taking any cow, ox, bull, stag, heifer, steer, calf, horse, mule, mare, colt, foal, or filly from one county to another to cause the same to be inspected at point of loading for brands, by a state stock inspector, and no railroad company, other carrier or person shall accept such livestock for shipment, unless the shipper shall produce a certificate of their inspection for brands as herein required; (provided, however, that the provisions of this act shall not apply to the said stock when driven by the owner from one county to another for the purpose of pasturing, feeding or changing the range thereof, nor to any stock so removed or taken from one county to another by any person, association or corporation, when such stock is used in the ordinary conduct of his or its business, and such person, association or corporation has been the owner of said stock to be removed for at least three months); and, provided further, that whenever any of the class of stock aforementioned shall be loaded for shipment with any railroad company and be consigned to any point where the state board of stock commissioners maintain a stock inspector, and where loading tally is filed as required in section 3341, then such shipments so consigned, need not be inspected before shipment.

If shipment is made other than by railroad, the person receiving said inspection certificate must retain the same until the animals are sold or delivered, after which it shall be forwarded to the livestock commission with a verified statement attached thereto, showing the name and address of the person, firm or corporation, to whom the animals were sold or delivered. [L. '39, Ch. 85, § 1, amending R. C. M. 1935, § 3324, as amended by L. '37, Ch. 133, § 1. Approved and in effect March 1, 1939.

Section 2 repeals conflicting laws.

3324.1. Loading and unloading livestock for inspection — place — county commissioners may designate. The board of county commissioners may designate within their respective counties certain convenient places and provide suitable facilities at said places for unloading and loading of livestock for inspection purposes. [L. '39, Ch. 74, § 1. Approved February 28, 1939; in effect July 1, 1939.

Section 2 repeals conflicting laws.

3326.1. Fees for inspection. For the service of inspection herein provided for, the officer making such inspections shall receive twenty-five cents per head for the inspection of twelve head or less, or three dollars per day for the inspection of more than twelve head, and shall receive in addition thereto his necessary actual expenses, to be paid by the person for whom the inspection is made. [L. '37, Ch. 133, § 2, adding a new section, § 3326.1, to R. C. M. 1935. Approved and in effect March 16, 1937.

Section 4 is partial invalidity saving clause.

Section 5 repeals conflicting laws.

3327. Penalty for violation of act — disposition of fines. Any person removing or attempting to remove any livestock of the kind named in section 3324 of this code, without first having received the certificate of inspection and removal herein provided for, and any railroad, other carrier or person accepting for shipment any such livestock, without compelling the shipper to first give satisfactory evidence of his having received an inspection and removal certificate as herein provided, and any person refusing to exhibit such certificate upon proper demand, and any person who shall load any of such stock for shipping and consign same to any point where the livestock commission maintains a stock inspector, and who shall then reassign them en route to any other points, so as to avoid inspection at point of shipment, and also the official inspection at the cities heretofore mentioned where such inspection is maintained, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum of not less than fifty dollars (\$50.00), nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for a period of not more than six months, or shall be punished by both such fine and imprisonment. All fines assessed and collected under the provisions of this act, fifty (50%) per cent thereof shall be turned into the state treasury, and placed to the credit of the livestock commission fund, and fifty (50%) per cent to the credit of the county in which the livestock shipment originated or from which the livestock were taken, except, that all fines collected where arrest is made by highway patrol-

men, or upon information furnished by highway patrolmen, in which event fifty (50%) per cent of such fines be deposited to the credit of the general fund of the county from which the livestock shipment originated or from which the livestock were taken, and the other fifty (50%) per cent be paid into the state treasury to be placed to the credit of the highway patrol revolving fund. [L. '37, Ch. 133, § 3, amending R. C. M. 1935, § 3327. Approved and in effect March 16, 1937.

Section 4 is partial invalidity saving clause.

Section 5 repeals conflicting laws.

CHAPTER 289A

LIVESTOCK MARKETS — ESTABLISHMENT, REGULATION, SUPERVISION, LICENSING, AND BONDING

Section

- 3332.1. Establishment — license — application — fee—bond—livestock commission—powers —violation of act—penalty.
- 3332.2. Definitions.
- 3332.3. License — necessity — fee — renewal — application—refusal—return of fee.
- 3332.4. Bond — necessity — conditions of — filing —actions thereon — copies — fees — evidence.
- 3332.5. Licenses—posting.
- 3332.6. Rules and regulations—livestock commission to make.
- 3332.7. Licenses — suspension or cancellation — grounds—violations—fraud.
- 3332.8. Records and reports—by licensee—inspection by commission.
- 3332.9. Investigations of licensee—filing complaint —notice of hearing—enforcement of act by commission—process—witnesses.
- 3332.10. Appeal from commission's decision—notice —bond — transcript — cost — hearing in district court—appeal to supreme court.
- 3332.11. Sales — title — warranty by operator—proceeds — liability to owner — procedure where ownership doubtful — brand inspector—duties.
- 3332.12. Fees—disposition by commission.
- 3332.13. Dispersal sales—requirements.
- 3332.14. Violations of act—penalties.

3332.1. Establishment — license — application — fee — bond — livestock commission — powers — violation of act — penalty. Any person upon making to the livestock commission of the state of Montana, a written statement satisfactory to said commission, of financial responsibility, and of ownership or control of adequate facilities for the care, sorting, feeding, loading, unloading, and shipment of livestock for the operation of a livestock market, and tendering the fee and furnishing the bond prescribed herein, may secure a license from the said commission, to establish and operate within the state of Montana for one year, a

livestock market as hereinafter defined. The operation of a livestock market in this state without such license is a penal offense, punishable as hereinafter prescribed. [L. '37, Ch. 52, § 1. Approved and in effect February 23, 1937.]

3332.2. Definitions. When used in this act.

a. The term "livestock" shall mean and include horses, mules, cattle, swine, sheep and goats.

b. The term "livestock market" shall mean a place where a person, partnership or corporation shall assemble livestock for either private or public sale. Such service is to be compensated for by owner, on a commission basis, except: (1) Any place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder or feeder who is discontinuing said business and no other livestock is there sold or offered for sale: (2) Any farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold, and no other livestock is brought there for sale or offered for sale: (3) The premises of any butcher, packer, or processor who received animals exclusively for immediate slaughter: (4) The premises of any person, firm, or corporation engaged in the raising of livestock for breeding purposes only, who limits his or its sales to animals of his or its own production: (5) Any place where an association of breeders of livestock of any class assemble and offer for sale and sell under their own management any livestock, who assume all responsibility of such sale and the title of livestock sold.

c. The term "person" shall mean and include all persons, co-partnership, association, or corporation. [L. '37, Ch. 52, § 2. Approved and in effect February 23, 1937.]

3332.3. License — necessity — fee — renewal — application — refusal — return of fee. After May 1, 1937, no person shall engage in the operation of a livestock market within the state of Montana without first procuring a license from the livestock commission, and paying therefor a fee of one hundred dollars (\$100.00). Said license may be renewed to eligible applicants prior to May first of each calendar year thereafter, upon regular application for, and payment of the regular fee. An application for a license to establish and operate a livestock market shall be in writing upon a blank form to be furnished and containing such information as shall be required by the livestock commission, and shall be accompanied by the fee above described. If the livestock commission does not issue a license or renewal, the fee must be returned

to the applicant. [L. '37, Ch. 52, § 3. Approved and in effect February 23, 1937.]

3332.4. Bond — necessity — conditions of — filing — actions thereon — copies — fees — evidence. No license or renewal of license to establish and operate a livestock market within the state of Montana shall be issued until the applicant shall have executed to the state of Montana, a bond in the penal sum of ten thousand dollars (\$10,000.00), upon a form prescribed by the livestock commission, with surety to be approved by the commission, conditioned upon the payment of all money received, less reasonable expenses and agreed commissions by the licensee and operator of such livestock market to the rightful owner or owners of livestock so consigned and delivered to such licensee for sale forthwith upon the sale of such livestock, and also a full compliance with all of the terms and requirements of this act, and the acceptance and approval of said bond by the livestock commission, and the approval thereof as to form by the attorney general of Montana. When so approved said bond shall be filed with the secretary of the livestock commission. Actions of law may be brought in the name of the state upon any such bond for the use and benefit of any person who may suffer loss or damage from violations thereof, and may be brought by any such person suffering loss or damage in the county of his residence. Copies of any such licenses and bond certified by the secretary of the livestock commission may be procured upon payment of the fee of one dollar (\$1.00) each and shall be received as competent evidence in any court of the state of Montana. [L. '37, Ch. 52, § 4. Approved and in effect February 23, 1937.]

3332.5. Licenses—posting. A certified copy of an issued license may be procured by the holder of the original upon payment of a fee of one dollar (\$1.00) therefor, and the original or certified copy of said license shall be posted during sale periods in a conspicuous place on the premises where the livestock market is conducted. [L. '37, Ch. 52, § 5. Approved and in effect February 23, 1937.]

3332.6. Rules and regulations — livestock commission to make. The livestock commission or the livestock sanitary board may adopt any such rules and regulations as it may deem necessary in the administration of this act. [L. '37, Ch. 52, § 6. Approved and in effect February 23, 1937.]

3332.7. Licenses — suspension or cancellation — grounds — violations — fraud. Any violation of the provisions of this act, or of any of the conditions of the bond, or of any

rules or regulations adopted and published by the livestock commission or any violation of the laws of the state of Montana including the laws requiring the inspection of horses and cattle as contained in chapter 287, sections 3317-3323.2 and chapter 288, sections 3324-3327.2 of the political code of the revised codes of Montana 1935, shall be deemed a sufficient cause for the cancellation of the license of the offending operator of such livestock market. The following shall also be specific grounds for cancellation of such license:

a. If the Montana livestock commission find that such licensee has been guilty of fraud or misrepresentation as to the titles, brands or ownership. [L. '37, Ch. 52, § 7. Approved and in effect February 23, 1937.

3332.8. Records and reports — by licensee — inspection by commission. Each licensee shall keep such accounts, records, and memoranda, and shall make such reports as may from time to time be required by the livestock commission, and the said commission shall at all times have access to such accounts, records and memoranda. [L. '37, Ch. 52, § 8. Approved and in effect February 23, 1937.

3332.9. Investigations of licensee — filing complaint — notice of hearing — enforcement of act by commission — process — witnesses. The livestock commission, or any member thereof, or the secretary of the livestock commission, may upon their own motion, or upon verified complaint in writing of any person, whenever they or either of them deem it necessary, shall investigate the actions of any licensee, and if they or either of them find it proper to do so, shall file complaint against the licensee with the livestock commission, and said complaint shall be set down for hearing before said commission upon ten (10) days' notice served upon such licensee either by personal service upon him or by registered mail or by telegram prior to such hearing.

The livestock commission shall have power to administer oaths, certify to all official acts and shall have the power to subpoena and bring before them any person in this state as a witness, compel the producing of books and papers and to take the testimony of any person or deposition in the same manner as is prescribed by law in the procedure before the courts of this state in civil cases. Process issued by the commission shall extend to all parts of the state and may be served by any person authorized to serve process. Each witness that shall appear by the order of the commission shall receive for his attendance the same fees and mileage allowed by law to witnesses in civil cases appearing in the district court, which amount shall be paid by the party

at whose request such witness is subpoenaed. When any witness has not been required to attend at the request of any party, but subpoenaed by the commission, his fees and mileage shall be paid in the same manner as other expenses of the said department are paid. [L. '37, Ch. 52, § 9. Approved and in effect February 23, 1937.

3332.10. Appeal from commission's decision — notice — bond — transcript — cost — hearing in district court — appeal to supreme court. If the commission shall refuse to grant an application for a license or shall suspend or revoke a license and the licensee shall feel aggrieved by the decision of the commission, he may appeal to the district court of the county in which he has his principal place of business, by giving notice of such appeal in writing to the commission and filing a bond with the clerk of the district court in the sum of three hundred dollars (\$300.00) to be approved by the judge of said court, conditioned to pay all costs that may be awarded against such appellant in the event of an adverse decision, said bond and notice and a transcript of the complaint, pleadings, notices, motions and other papers filed in the cause with the commission, certified by the secretary of the livestock commission, to be filed within ten (10) days from the date of the decision of the commission. Cost of preparing such transcript shall be paid by appellant. The filing of such notice and bond shall supersede the order of the commission until the final determination of the appeal. The judge of the court shall summarily hear and determine the questions involved in said appeal and shall receive and consider any pertinent evidence whether oral or documentary concerning the matter. If the aggrieved person should fail to perfect his appeal or file said transcript as herein provided, said stay shall automatically terminate. Appeals from judgments of the district court may be taken to the supreme court in the same manner as appeals are taken in civil actions. [L. '37, Ch. 52, § 10. Approved and in effect February 23, 1937.

3332.11. Sales — title — warranty by operator — proceeds — liability to owner — procedure where ownership doubtful — brand inspector — duties. The operator of each livestock market in this state shall warrant to the purchaser thereof the title of all livestock sold through his livestock market and shall be liable to the rightful owner thereof for the net proceeds in cash received for such livestock so sold, and it shall be the further duty of such operator when notified by the authorized brand inspector, that there is a question as to whether any designated livestock sold through

such market is lawfully owned by the consignor thereof, to hold the proceeds received from the sale of said livestock for a reasonable time not to exceed sixty (60) days, to permit the consignor to establish ownership, and if at the expiration of that time, the consignor fails to establish his lawful ownership of such livestock, said proceeds shall be transmitted by such operator to the secretary of the livestock commission, which secretary shall have authority to dispose of such proceeds in accordance with chapter 290, sections 3333-3334 of the political code, revised codes of Montana 1935, relating to the distribution of estray money, and the secretary's receipt therefor shall relieve said operator from further responsibility for said proceeds. Proof of ownership and account of all sales of livestock shall be transmitted by the authorized brand inspector to the secretary of the livestock commission. [L. '37, Ch. 52, § 11. Approved and in effect February 23, 1937.

3332.12. Fees — disposition by commission. All fees collected by the commission under the provisions of this act shall be paid into the state treasury monthly and shall be credited to the livestock commission fund. [L. '37, Ch. 52, § 12. Approved and in effect February 23, 1937.

3332.13. Dispersal sales—requirements. All dispersal sales made at livestock markets shall meet the requirements prescribed for other livestock passing through such market. [L. '37, Ch. 52, § 13. Approved and in effect February 23, 1937.

3332.14. Violations of act — penalties. Any person who shall violate any provisions or requirement of this act or rule or regulation adopted by the livestock commission pursuant to this act, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100.00) or by imprisonment in the county jail for a period not less than thirty (30) days or by both such fine and imprisonment. Every person who having been convicted of a violation of this act shall after such violation of any of the provisions of this act again be found guilty of a violation as aforesaid shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months or by both such fine and imprisonment. [L. '37, Ch. 52, § 14. Approved and in effect February 23, 1937.

Section 15 is partial invalidity saving clause.
Section 16 repeals conflicting laws.

CHAPTER 291

HIDES OF SLAUGHTERED CATTLE —
REGULATIONS — HIDE DEALERS'
LICENSE

- Section
- 3350.1. Hide buyers to procure a bill of sale — contents of bill of sale—seal to be affixed to hides—inspection.
- 3350.2. Falsifying bill of sale of hides deemed a misdemeanor.
- 3350.3. Repealed.
- 3350.7. Hide buyer defined.
- 3350.8. Hide dealer or buyer's license fee—disposal of proceeds.
- 3350.9. Repealed.
- 3350.9a. Fees for inspection.
- 3350.10. Inspection tags to be on purchased hides.
- 3350.11. Unlawful for carriers to transport uninspected and untagged hides.
- 3350.12a. Violation of act—penalty.
- 3350.15. Repeals.

3350.1. Hide buyers to procure a bill of sale — contents of bill of sale — seal to be affixed to hides — inspection. Any person, firm, association or corporation who shall purchase or receive any hide or hides of cattle or of any horse, mare, colt, mule, jack, or jenny, shall obtain from the owner thereof or from his legally authorized agent, at the time of purchasing or receiving the same, a bill of sale in writing, which bill of sale shall recite in full the date of receiving the hide or hides, the name of the person, firm, association or corporation selling such hide or hides, a description of each hide which shall include the marks and brands on each hide and which shall be in the following form:

BILL OF SALE _____, Montana
This is to certify that _____ have this _____ day of _____, 19____, sold to _____ hides or pelts described below, for and in consideration of the sum of _____ dollars \$_____.

Color	Brand	Position	Tag Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

As prescribed by the laws of the State of Montana, I have affixed tag or tags, as shown above to the individual described hides in the presence of the seller.

The tag or tags numbered as shown above were affixed to the above described hides in my presence and I guarantee to the buyer title to said hides.

Buyer

Seller

P. O. Address and
County

P. O. Address and
County

and shall keep a permanent record of all such purchases. Such bill of sale forms shall be furnished by the Montana livestock commission to the said buyer, at actual cost of printing, mailing and handling, and may be obtained by the said buyer from any sheriff of the state.

On purchasing any hide or hides of a seller thereof, the buyer at the time of the purchase shall make a record thereof in triplicate on the bill of sale as aforesaid, filling out in detail the data required, which bill of sale shall then and there be signed by the buyer and seller. One copy of such bill of sale shall be retained by the seller, one copy retained by the hide buyer, and the original copy shall be filed in the office of the clerk and recorder of the county of seller's residence, without cost. At the time of the sale the buyer shall securely affix in each hide a numbered lead seal, the form of which shall be specified by the livestock commission. Each seal shall bear the number assigned to the county by the livestock commission. Such seals shall be furnished by the county and shall be procured from the sheriff of the county of the seller's residence, and the sheriff shall keep an accurate record in a bound book furnished by the county of all seals procured from him. The number of the tag in the bill of sale shall correspond with the number on the lead seal so attached. Thereupon and prior to removing the hide from the county of the transaction, which shall be the seller's county of residence, the buyer shall forthwith submit all hides purchased for inspection to the sheriff of the county or his deputy, or to any person designated by the board of county commissioners, or the livestock commission, who shall inspect such hide or hides and issue a certificate of inspection in such form as may be required by the Montana livestock commission and such inspector shall issue to the hide buyer a certificate of inspection and shall file without cost a duplicate in the office of the clerk and recorder of the county of the seller's residence and shall retain a duplicate for his own records, except that no inspection or tag shall be required in the case of hides which have already been inspected and marked, or tagged, as provided for in chapter 284, political code, revised codes of Montana, 1935.

~ Provided, however, that no delivery of any hide or hides shall be made as between the seller and hide buyer in any county other than the county of seller's residence, unless and until the hide or hides have been inspected by an inspecting officer as herein mentioned, in the county of seller's residence.

Provided, further, that if the animal or animals from which such hide or hides have

been taken have been killed or butchered in a county other than that wherein seller resides then such inspection and delivery may be had in either of said counties, but such certificate must be filed in the county of seller's residence as hereinbefore provided. [L. '39, Ch. 177, § 3, amending R. C. M. 1935, § 3350.1. Approved and in effect March 17, 1939.]

3350.2. Falsifying bill of sale of hides deemed a misdemeanor. Any person, firm, association, or corporation either selling or disposing of or purchasing hides in any manner, who shall wilfully or intentionally falsify the bill of sale covering such hides, shall be deemed guilty of a misdemeanor and shall be punished as provided by section 3350.12. [L. '39, Ch. 177, § 4, amending R. C. M. 1935, § 3350.2. Approved and in effect March 17, 1939.]

3350.3. Repealed. [L. '39, Ch. 177, § 9. See § 3350.15.]

3350.7. Hide buyer defined. For the purpose of this act, every person, firm, corporation or association engaged in the business of buying or selling the hide or hides of any cattle or of any horse, mare, colt, mule, jack, or jenny, shall be designated a hide dealer or buyer. [L. '39, Ch. 177, § 1, amending R. C. M. 1935, § 3350.7. Approved and in effect March 17, 1939.]

3350.8. Hide dealer or buyer's license fee—disposal of proceeds. Every hide dealer or buyer, before engaging in, or conducting any business as such, in any county, shall pay to the county treasurer of such county a license fee of one (\$1.00) dollar, which license shall continue in force and effect for that calendar year. The county treasurers of the state are hereby authorized and required, upon payment of any such license fee, to issue a proper certificate of such payment. The moneys collected from such licenses shall be placed in the general fund of the county wherein collected. [L. '39, Ch. 177, § 2, amending R. C. M. 1935, § 3350.8. Approved and in effect March 17, 1939.]

3350.9. Repealed. [L. '39, Ch. 177, § 9. See § 3350.15.]

3350.9a. Fees for inspection. Hide inspectors may collect a fee, not to exceed ten cents (10c) for each hide inspected, which fee shall be retained by the said inspector. [L. '39, Ch. 177, § 7. Approved and in effect March 17, 1939.]

3350.10. Inspection tags to be on purchased hides. It shall be unlawful for any person, firm, association or corporation to purchase the

hide or hides of any horse, mare, colt, mule, jack or jenny, or cattle which does not bear the inspection tag placed on such hide by an inspector as herein provided or by the buyer at time of purchase. [L. '39, Ch. 177, § 5, amending R. C. M. 1935, § 3350.10. Approved and in effect March 17, 1939.

3350.11. Unlawful for carriers to transport uninspected and untagged hides. It shall be unlawful and a misdemeanor punishable as provided in section 3350.12, for any railroad company, express company or other common carrier to accept for shipment or transport any hide or hides, as referred to in this act, unless such hide or hides has affixed thereto the lead tag or seal provided in this act or the mark or tag as provided by section 3298.18, revised codes of Montana, 1935, and each shipment must be accompanied by an itemized list prepared by the shipper, to accompany the bill of lading showing the number and kinds of hides and giving the brand or brands on each hide and the serial number and the county as given on the lead tag. Provided, however, that in case of shipment of hides out of the state of Montana in carload or truckload lots the tags or seals may be removed at the time of shipment and no itemized list need accompany the bill of lading. [L. '39, Ch. 177, § 6, amending R. C. M. 1935, § 3350.11. Approved and in effect March 17, 1939.

3350.12a. Violation of act—penalty. Any person or persons, firm, association, company or corporation who shall fail to comply with the provision of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished as provided by section 3350.12, revised codes of Montana, 1935. [L. '39, Ch. 177, § 8. Approved and in effect March 17, 1939.

3350.15. Repeals. That sections 3350.3 and 3350.9 of chapter 291, revised codes of Montana, 1935, and all acts and parts of acts in conflict herewith be, and are hereby repealed. [L. '39, Ch. 177, § 9. Approved and in effect March 17, 1939.

CHAPTER 298

BOUNTIES FOR KILLING WILD ANIMALS —KILLING DOGS INJURING OR DESTROYING LIVESTOCK

Section

3417.17. Fish and game commission — payment of bounty claims — source — fish and game fund — livestock commission delivery of claims to fish and game commission — approval by board of examiners.

3417.17. Fish and game commission — payment of bounty claims — source — fish and game fund — livestock commission delivery of claims to fish and game commission — approval by board of examiners. The fish and game commission shall pay bounty claims for wild animals which have been filed, registered and approved in the office of the livestock commission; the state fish and game commission is empowered to and shall pay out of the state fish and game funds other than those funds derived from license fees paid by hunters and fishermen for bounties on predatory wild animals, as such bounty claims are presented, not exceeding seven thousand five hundred dollars (\$7,500.00) per calendar year.

The livestock commission shall, after the filing, registration and approval of the bounty claim or certificate in its office, deliver the same to the office of the state fish and game commission for rejection or approval. If such claim or certificate is rejected it shall be returned by the fish and game commission to the livestock commission and if approved it shall be delivered to the state board of examiners for allowance or disallowance. Provided, however, that nothing herein shall be construed as taking from the fish and game commission the exclusive power to administer said funds at their discretion.

If the state board of examiners approve and allow any such claim or certificate, they must endorse thereon over their signatures, "Approved for the sum of.....dollars", and transmit the same to the auditor, and the auditor must draw his warrant on the state fish and game fund for the amount so approved and allowed, in favor of the claimant, or his assigns, in the order in which the same is approved. [L. '39, Ch. 174, § 2. Approved and in effect March 17, 1939.

Section 4 repeals conflicting laws.

CHAPTER 300

SAMPLING AND ASSAYING ORE

Section

3444.1. Sampling works and smelters to mail statement to lessee.

3444. Purchaser of ore from leased mines to furnish statement.

Note. Penalty for violation of section, see § 3446.

3444.1. Sampling works and smelters to mail statement to lessee. That all sampling works and smelters within this state shall mail a duplicate copy of any statement showing the gross and net proceeds of all ores bought or treated from lessors of mines, to the lessee or

lessees of the mine or mining claim from which the same shall have been extracted at the same time such statement is furnished to the lessor of said mine or mining claim or shipper of such ore. [L. '37, Ch. 17, § 1, adding new section, § 3444.1, to R. C. M. 1935. Approved and in effect February 10, 1937.]

Section 3 repeals conflicting laws.

Note. Penalty for violation of section, see § 3446.

CHAPTER 301

PAYMENT FOR CONSIGNMENTS OF ORE —PURCHASERS FROM LEASED MINES

Section

3446. Smelters—penalty for violation.

3446. Smelters—penalty for violation. Any person or corporation operating any sampling works, or smelter, within this state who shall violate any of the provisions of sections 3444 and 3444.1 of this code shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than fifty (\$50.00) dollars, nor more than one hundred (\$100.00) dollars. [L. '37, Ch. 17, § 2, amending R. C. M. 1935, § 3446. Approved and in effect February 10, 1937.]

Section 3 repeals conflicting laws.

CHAPTER 302

REGULATION OF COAL-MINING INDUSTRY

Section

3486. Mine operators to furnish wash houses for employees—location—facilities—fire loss—liability of operator—malicious injury to property.

3501. Ventilation of coal mines—air circulation—measurement—fire damp—minimum oxygen content of air.

3504. Cross-cuts and brattices for ventilation—construction.

3486. Mine operators to furnish wash houses for employees—location—facilities—fire loss—liability of operator—malicious injury to property. It shall be the duty of the owner, operator, or superintendent of any coal mine in the state of Montana to provide a suitable building, not an engine or boiler house, for the use of the persons employed in such mine, for the purpose of washing themselves and changing their clothes when entering the mine and returning therefrom. The said building shall not be over eight hundred feet from and convenient to the principal entrance of such mine when practicable to do

so. When not practicable to build the wash house within the said distance and still conform to the other requirements of this section, the state coal-mine inspector may give written permission to place the building at a greater distance from the mine than that herein specified, and the operator shall not be guilty of violation of this section. The said building shall be kept sanitary, maintained in good order, be properly lighted and heated, and supplied with good, clean cold and warm water, and be provided with facilities for persons to wash and a suitable locker or other facility for each person to be used by him as a repository for his usual clothes and personal effects for the loss of which by fire, the operator shall be liable for the value of such aforementioned personal property to an amount not to exceed a total sum of twenty-five dollars (\$25.00), for each individual employee. Provided this section does not apply where the number of employees does not exceed twelve (12) actually engaged in the mining of coal.

If any person shall maliciously injure or destroy, or cause to be injured or destroyed, the said building or any part thereof, or any of the appliances or fittings used for supplying light, heat, or water therein, or doing any act tending to the injury or destruction thereof, he shall be deemed guilty of an offense against this act and subject to a fine as hereinafter provided for. [L. '37, Ch. 146, § 1, amending R. C. M. 1935, § 3486. Approved and in effect March 16, 1937.]

3501. Ventilation of coal mines—air circulation—measurement—fire damp—minimum oxygen content of air. The owner, operator or superintendent of every coal mine, whether operated by shaft, slope or drift, shall provide and hereafter maintain ample means of ventilation for the circulation of air through the main entries, cross entries and all other working places, to an extent that will dilute, carry off and render harmless, the noxious or dangerous gases generated in the mine, affording not less than one hundred and fifty cubic feet per minute for each and every person employed therein, and not less than six hundred cubic feet per minute for each and every animal and mobile loading machine while in operation in the mine; but in any mine, or section of a mine, where fire-damp is generated, not less than two hundred cubic feet of air per minute shall be provided for each person, or as much more as may be necessary to keep such section free from fire-damp. The quantities of air in circulation shall be ascertained with an anemometer or other efficient instrument; such measurement shall be made by the foreman or his assistants once

a week at the inlet and outlet airways, and also at or near the face of each entry, and shall be recorded in the book kept for that purpose at the mine office. The quantity of air as provided for in this act for each person shall be conducted to each working place.

The oxygen content of the air in a coal mine must be maintained at nineteen or more per cent. and the carbon dioxide at less than one per cent. and all poisonous gas must be kept below a harmful percentage as determined by samples of air taken by the state coal mining inspector. All requirements relative to the purity of air in coal mines, not herein provided for, shall conform to the recommendations and requirements of the United States bureau of mines relative to coal mines in the state of Montana.

In rooms generating fire-damp, the volume of air required by this act shall be conducted to the face thereof by the use of brattice-cloth or other suitable means. [L. '39, Ch. 145, § 1, amending R. C. M. 1935, § 3501, as amended by L. '37, Ch. 146, § 2. Approved and in effect March 11, 1939.

Section 2 repeals conflicting laws.

3504. Cross-cuts and brattices for ventilation — construction. Cross-cuts between the entries, except where the same are within the confines of shaft bottom pillars, or are hereafter provided for, shall be made not exceed sixty (60) feet apart, unless sufficient brattice is used to keep the air current up to the entry face, in which case they shall not exceed one hundred (100) feet apart. Where entries or rooms are being driven by entry driving machines, or any other mechanical loading device, or where local mechanical methods of ventilation are installed to furnish air to the workmen at the face, cross-cuts may be driven at not exceeding three hundred (300) feet apart, provided that brattice, tubing or some other device is used sufficient to give at the face twice the amount of air per man and animal provided for in section 3501, and to clear said face of powder smoke before the men are required to return to work therein. In mines or sections of a mine where no local mechanical methods of ventilation are installed, when there is a solid block on one side of a room, cross-cuts shall be made between such room and the adjacent room not to exceed sixty (60) feet apart; where there is a breast or group of rooms, a cross-cut shall be made on one side or the other of each room, except the room adjoining said block, not to exceed fifty (50) feet from the outside corner of the cross-cut to the nearest corner of the entrance of the room, and on the opposite side of the same room a cross-cut

shall be made not to exceed ninety (90) feet from the outside corner of the cross-cut to the nearest corner of the entrance of the room, and thereafter cross-cuts shall be made not to exceed eighty (80) feet apart on each side of the room.

Brattices between permanent inlet and outlet airways shall hereafter be constructed in a substantial manner of brick, blocks, masonry, concrete, or non-perishable material. Rooms must not be worked in advance of the ventilating current. [L. '37, Ch. 146, § 3, amending R. C. M. 1935, § 3504. Approved and in effect March 16, 1937.

CHAPTER 305

CONSERVATION OF OIL AND NATURAL GAS—OIL CONSERVATION BOARD

Section

3554.14. Crude petroleum — production, sale, or storage—privilege and license tax—producers for others—reimbursement.

3554.14a. Petroleum and natural gas production — deductions—expenditures—how computed.

3554.15. Crude petroleum production — quarterly statements — assessments — payment — amount—more than one place of business.

3554.14. Crude petroleum—production, sale, or storage — privilege and license tax — producers for others — reimbursement. There is hereby levied and assessed a privilege and license tax of one-fourth of one per cent [one cent?] per barrel on each and every barrel of crude petroleum produced, saved and marketed or stored within the state of Montana, during the period during which said board is in existence. Producers thereof shall pay such tax on each barrel of crude petroleum produced for themselves as well as for others including royalty holders and shall be reimbursed for such tax paid on crude oil produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum produced for others as provided in section 2091.1 of the revised codes of Montana of 1935. [L. '37, Ch. 123, § 1, amending R. C. M. 1935, § 3554.14. Approved March 15, 1937; effective April 1, 1937.

3554.14a. Petroleum and natural gas production — deductions — expenditures — how computed. The state board of equalization in computing the deductions allowable for expenditures under section 2090 of the revised codes of the state of Montana on petroleum and natural gas production, shall compute and allow deductions for any such expenditures made prior to the year for which any such statement is made, where the same have not been previously allowed in computing such

net proceeds under the laws of the state of Montana; provided that no such deductions shall be allowed on account of any expenditures made during any calendar year prior to the year 1936; and provided further that no deductions shall be allowed for expenditures except for the calendar year for which the computation is made and the calendar year preceding the year for which the computation is made. [L. '37, Ch. 202, § 1. Approved and in effect March 18, 1937.]

Section 2 repeals conflicting laws.

3554.15. Crude petroleum production — quarterly statements — assessments — payment — amount — more than one place of business. Each producer of crude petroleum in the state of Montana shall, not later than the last day of each of the calendar months of January, April, July, and October, of each and every calendar year, beginning with the month of July of the year one thousand nine hundred and thirty-seven, render a true statement to the state treasurer of the state of Montana, and a duplicate thereof to the oil conservation board of the state of Montana, duly signed and sworn to, of all crude petroleum produced by him in this state during the next preceding three calendar months, and containing such other information as the oil conservation board may require, and shall accompany such statement with the payment to the state treasurer of the assessment provided for in section 3554.14 of the revised codes of Montana of 1935 in an amount equal to one-fourth of one cent per barrel for each barrel of crude petroleum produced by him within the state of Montana during the period covered by such statement. Any producer carrying on business at more than one place or location in this state may include all such places of business in one statement. [L. '37, Ch. 123, § 2, amending R. C. M. 1935, § 3554.15. Approved March 15, 1937; in effect April 1, 1937.]

CHAPTER 306

THE DEPARTMENT OF AGRICULTURE, LABOR, AND INDUSTRY—REGULATION OF AGRICULTURE, HORTICULTURE, APICULTURE, POULTRY HUSBAN- DRY, DAIRYING, GRAIN GRADING AND INSPECTION, STATISTICAL DATA AND THE STATE FAIR

Section

3564. Department of agriculture, labor, and industry—duties—enforcement of laws for protection and regulation of farming industry—study of conditions—recommendations to governor—other matters—making of rules and regulations.

Section

3575.1. Repealed.
3575.2. Fees for scale inspection service—amount of fees.
3575.3. Bills and accounts of state sealer of weights and measures and his deputies—presentation to board of examiners—contingent revolving fund.
3575.4-3575.7. Repealed.
3593. Definitions.
3594. Labeling of agricultural seeds—contents of label—information required—seed mixtures—tag or label—contents.
3595. Agricultural seeds—when exempt from act.
3596. Violations of act—penalty.
3597. Inspection of seeds—director of grain inspection laboratory—commissioner of agriculture—powers and duties—enforcement of act—rules and regulations.
3598. Director of grain inspection laboratory—employment of agents—salaries and expenses—cost of publications—source of payment.
3599. Testing of seed samples for citizens—charges and fees—disposition thereof.
3600. Certificate of grain inspection laboratory—evidence—presumption of correctness.
3601, 3602. Repealed.
3608.1. Repealed.
3614. Sale of nursery stock—seller to notify commissioner of agriculture or the nearest horticultural inspector—duties of inspector—charges and fees—collection.
3617. Removal of infected trees, etc.—condemnation—power of department—cost—lien on land.
3626. Infested fruit—importation or sale—evidence of infection—condemnation—processing grown infested fruit—permit.
3633.4. Farm products—grading and branding—grades—seed products—U. S. commercial grades—Montana combination grade.
3635.1. Federal fair labor standards act—enforcement—duty of department to cooperate with federal department of labor—expenses—reimbursement.
3649.1a. Mustard seed—purchasers of crop before harvest—bond—license—fee.
3649.1b. Same—enforcement of act—duty of commissioner of agriculture—rules and regulations.
3649.1c. Same—license fees—disposition.
3649.1d. Same—licenses—revocation—reports by licensees.
3649.1e. Same—violation of act—penalties.
3649.1f. Hay dealers—regulation—license—necessity.
3649.1g. Same—bond—necessity.
3649.1h. Same—dealer's bond—penal sum—how determined—minimum.
3649.1i. Same—license—term—fee.
3649.1j. Same—commissioner of agriculture—powers and duties—rules and regulations.
3649.1k. Same—false representation as to quality of hay—inspection.
3649.1m. Same—section 2443.3 not applicable to hay.
3649.1n. Same—repeals.

3564. Department of agriculture, labor, and industry — duties — enforcement of laws for protection and regulation of farming industry — study of conditions — recommendations to governor — other matters — making of rules

and regulations. The department of agriculture, labor and industry, through its authorized agents and representatives, shall enforce all the laws of Montana now existing or hereafter enacted for the protection and regulation of the farming industry in Montana; it shall also make a special study of the conditions of farm life in Montana and the problems of marketing and distribution of farm products, and shall from time to time make recommendations to the governor concerning needed legislation upon such subjects; it shall enforce the provisions of sections 3593 to 3602 of this code, relating to purity of agricultural seeds, and of sections 3603 to 3607 of this code, relating to the eradication of the barberry plant, and of sections 3631 to 3633 of this code, relating to the control of insect pests and plant diseases, and for that purpose shall make proper and necessary rules and regulations. [L. '39, Ch. 88, § 1, amending R. C. M. 1935, § 3564. Approved and in effect March 1, 1939.]

Section 10 repeals conflicting laws.

3573. The division of grain standards and marketing.

1937. ✓ Statutes in Montana governing the warehousing of grain required public warehousemen to give bond covering the grain held by them. There was no such requirement as to beans. A bond was taken by Chatterson and Sons in the name of the State of Montana for the benefit of the persons storing beans in their warehouse. After default by Chatterson and Sons the State of Montana sued for the use and benefit of the holders of the defaulted warehouse receipts. Held, that the bonding company having executed the bond in favor of the state for the use and benefit of these parties the bonding company is in no position to claim that the state is not the proper party to enforce its obligation. *Fidelity and Deposit Co. v. Sate of Montana*, 92 Fed. (2d) 693. Citing, *County of Wheatland v. Van*, 64 Mont. 113, 207 P. 1003, 20 R. C. L. 665-667, 47 C. J. 26.

3575.1. Repealed. [L. '39, Ch. 146, § 31. See § 4264.2. Approved and in effect March 11, 1939.]

3575.2. Fees for scale inspection service — amount of fees. There shall be collected by the state sealer of weights and measures or his deputies from each person, firm, co-partnership or corporation the following inspection fees: For each railroad track scale the sum of ten dollars (\$10.00); grain shipping hopper scale with a capacity of forty thousand (40,000) pounds or over, ten dollars (\$10.00); wagon scale, truck scale, coal scale, dump scale, automatic or hopper shipping scale, beet scale, and stock scale, five dollars (\$5.00); for each dormant platform scale, and dial scale with a capacity of five hundred (500) pounds to one thousand (1,000) pounds, two dollars (\$2.00); each portable scale, meat track scale, hanging

scale and commercial person weighing scale, one dollar (\$1.00); grain testers and other small scales used for weighing and testing grain in grain elevators, or warehouses, fifty cents (50c); all counter scales with a capacity of one (1) to ten (10) pounds, twenty-five cents (25c); all counter scales with a capacity of over ten (10) pounds, seventy-five cents (75c). The sealer of weights and measures, shall by proper regulation, fix inspection fees for any scales, weights, measures, weighing and computing devices not covered by the foregoing schedule of fees. [L. '39, Ch. 146, § 2, amending R. C. M. 1935, § 3575.2. Approved and in effect March 11, 1939.]

3575.3. Bills and accounts of state sealer of weights and measures and his deputies — presentation to board of examiners — contingent revolving fund. All bills and accounts incurred by the state sealer of weights and measures and his deputies shall be presented to the board of examiners and allowed by said board in the same manner as provided for other claims contracted for and in behalf of the state of Montana. And to expedite the handling of the work in the field there shall be set aside a contingent revolving fund of two thousand dollars (\$2,000.00) out of which the expenses of the field men shall be paid each week, together with other emergency cash claims. [L. '39, Ch. 146, § 3, amending R. C. M. 1935, § 3575.3. Approved and in effect March 11, 1939.]

3575.4-3575.7. Repealed. [L. '39, Ch. 146, § 31. See § 4264.2. Approved and in effect March 11, 1939.]

3579. Charges of public warehousemen.

1938. ✓ If a warehouseman should interplead claimants for stored property without making a claim for storage charges it would subject itself to the penalty of this section. *Rocky Mountain Elevator Co. v. Bammel*, 106 Mont. 407, 81 P. (2d) 673.

3592.1. License for seed warehouses.

1937. ✓ Statutes in Montana governing the warehousing of grain required public warehousemen to give bond covering the grain held by them. There was no such requirement as to beans. A bond was taken by Chatterson and Sons in the name of the State of Montana for the benefit of the persons storing beans in their warehouse. After default by Chatterson and Sons the State of Montana sued for the use and benefit of the holders of the defaulted warehouse receipts. Held, that the bonding company having executed the bond in favor of the state for the use and benefit of these parties the bonding company is in no position to claim that the state is not the proper party to enforce its obligation. *Fidelity and Deposit Co. v. Sate of Montana*, 92 Fed. (2d) 693. Citing, *County of Wheatland v. Van*, 64 Mont. 113, 207 P. 1003, 20 R. C. L. 665-667, 47 C. J. 26.

1936. ✓ Suit on warehouseman's bond issued in the name of the State of Montana for the benefit of those who stored beans in warehouse. Bond inad-

vertantly read grain instead of beans. Held that bond could be reformed to read "beans" instead of "grain," and that the suit could be brought in the name of the State of Montana. *State of Montana v. Fidelity and Deposit Co.*, 16 F. Supp. 489.

3592.8. Additional bond required from grain warehousemen for seed storage.

1937. ✓ Statutes in Montana governing the warehousing of grain required public warehousemen to give bond covering the grain held by them. There was no such requirement as to beans. A bond was taken by Chatterson and Sons in the name of the State of Montana for the benefit of the persons storing beans in their warehouse. After default by Chatterson and Sons the State of Montana sued for the use and benefit of the holders of the defaulted warehouse receipts. Held, that the bonding company having executed the bond in favor of the state for the use and benefit of these parties the bonding company is in no position to claim that the state is not the proper party to enforce its obligation. *Fidelity and Deposit Co. v. State of Montana*, 92 Fed. (2d) 693. Citing, *County of Wheatland v. Van*, 64 Mont. 113, 207 P. 1003, 20 R. C. L. 665-667, 47 C. J. 26.

3593. Definitions. Terms as used in this act and not otherwise identified, are hereby defined:

1. The term "agricultural seeds" or "agricultural seed" shall include the seeds of the legumes, such as alfalfa, clovers, sweet clover, field and canning peas, field beans, vetches, and soy beans; the grasses, such as the blue grasses, timothy, redtop, brome grasses, canary grass, fescues, oat grass, orchard grass, rye grasses, and wheat grasses; the cereals, such as wheat, oats, barley, rye, corn, and hybrid corn; and miscellaneous crops such as rape, buckwheat, millet, sorghums, mustard, flax; together with seeds of any other crops that may be raised as field crops in Montana, when such are sold, offered, or exposed for sale within this state, country or territory, for seeding purposes within this state.

2. The term "noxious weeds" shall mean those plants which are a menace to Montana agriculture and which are especially difficult to control, and shall include: Quack grass, fanweed, wild oats, dodder, Canada thistle, wild mustard, wild morning glory, white top, leafy spurge, perennial sow thistle, Russian knapweed, and blue lettuce.

3. The term "weed seed" shall mean the term noxious weeds, above listed, and all seeds not listed as agricultural seeds.

4. The terms "approximate percentage" and "approximate number" shall mean the percentage or number with the variations above or below as allowed according to the tolerance limits defined in the "rules for seed testing" adopted by the Association of Official Seed Analysts of North America.

5. The term "percentage of germination" shall mean the percentage of seeds which show

normal sprouts as evidence of vitality when such seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of such seed, as specified in the "rules for seed testing" adopted by the Association of Official Seed Analysts of North America.

6. The term "name of state in which such seed was grown" shall mean any of the several states of the United States or the foreign country.

7. The term "other crop seeds" shall mean any agricultural seeds other than the seed or the mixture of agricultural seeds under consideration.

8. The term "sell" shall include "offer for sale", "expose for sale", "have in possession for sale", "exchange", "barter", or "trade". It shall also include agricultural seeds which are furnished to growers for the production of a crop on contract. [L. '39, Ch. 88, § 2, amending R. C. M. 1935, § 3593. Approved and in effect March 1, 1939.]

Section 1 repeals conflicting laws.

3594. Labeling of agricultural seeds — contents of label — information required — seed mixtures — tag or label — contents. The owner, vendor, or person in possession of each and every package, parcel, or lot of agricultural seeds; as defined in the preceding section, which contains one (1) pound, or more, of such agricultural seeds, whether in package or in bulk, shall before offering such seeds for sale affix thereto, in a conspicuous place on the exterior of the container of such agricultural seeds, a written or printed label in the English language in legible type or copy, such label containing a statement specifying:

1. A lot number or other distinguishing mark; the commonly accepted name of the kind or kinds of such agricultural seed, together with the variety name, and if such is not known, the fact must be so stated by using the word "unknown."

1a. Name of state, country or territory, in which such agricultural seed was grown.

2. The approximate percentage of germination of such agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately; with the provision that any portion or all of the percentage of such hard seeds may be added to the percentage of germination, and stated as "total life seed."

3. The approximate percentage by weight of purity; meaning the freedom of such agricultural seeds from inert matter and from other seeds distinguishable by their appearance.

4. The approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in such agricultural seeds.

5. The approximate total percentage by weight of weed seeds.

5a. The approximate percentage by weight of other crop seeds in such agricultural seeds.

6. The name and approximate number per pound of each kind of the seeds of the noxious weeds, if any such are found in such agricultural seeds in quantities in excess of one in portions of the seed equal to the following:

(a) Five (5) grams of small seeds defined as alfalfa, clovers, sweet clover, timothy, redtop, blue grass, oats grass, orchard grass, fescues, brome grass, rye grasses, wheat grasses, and all other grasses and clovers not otherwise classified. (b) Twenty-five (25) grams of medium sized seeds defined as millets, rape, flax, and other seeds not specified in (a) or (c) of this subsection. (c) One hundred (100) grams of wheat, oats, rye, barley, buckwheat, vetches, and other seeds as large or larger than wheat.

7. The full name and address of the seedsman, importer, dealer or agent or of other persons or person, firm or corporation selling, offering, or exposing the said agricultural seed for sale.

8. Mixtures of agricultural seeds which contain two (2) or more kinds of such seeds in excess of five per cent (5%) by weight of each, when sold, offered, or exposed for sale as mixtures, shall have affixed thereto, in a conspicuous place on the exterior of the container of such mixture of seeds, a plainly written or printed tag or label in the English language, stating:

(a) Name of mixture.

(b) The name and approximate percentage by weight of each kind of agricultural seed present in such mixture in excess of five (5%) per cent by weight of the total mixture.

(bb) Approximate percentage by weight of broken seeds and other inert matter in such mixture of agricultural seeds.

(c) Approximate percentage by weight of weed seeds as defined in subdivision 3 of section 3593.

(cc) Approximate percentage by weight of other crop seed in such mixture of agricultural seeds.

(d) The name and approximate number per pound of each kind of the seeds or bulblets of the noxious weeds listed in subdivision 2, of section 3593, which are present singly or collectively in excess of one seed or bulblet in each fifteen (15) grams of such mixture.

(e) Approximate percentage of germination of each kind of agricultural seed present in such mixture in excess of five per cent (5%) by weight, together with the month and year said seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately; with the provision that any portion or all of such hard seed may be added to the percentage of germination and stated as "total live seed".

(f) Full name and address of the vendor of such mixture.

(g) When space is provided on labels appearing on seed, providing for the insertion of specific items relative thereto and such spaces are left open, the blank space or spaces shall be deemed to imply that the word "none" was intended, when such interpretation is reasonable.

(9) The Montana commissioner of agriculture, labor and industry shall prescribe the form of labels to be used as provided for in section 3594. [L. '39, Ch. 88, § 3, amending R. C. M. 1935, § 3594, as amended by L. '37, Ch. 192, § 1. Approved and in effect March 1, 1939.

Section 10 repeals conflicting laws.

3595. Agricultural seeds—when exempt from act. Agricultural seeds or mixtures of same shall be exempt from the provisions of this act:

(1) When possessed, exposed for sale, or sold for food purposes only.

(2) When sold to merchants or dealers to be recleaned before being sold or offered for sale for seeding purposes.

(3) When in store for the purpose of recleaning or not possessed, sold or offered for sale for seeding purposes within the state.

(4) When sold by a processor of sugar beets to growers contracting the growing and delivery of sugar beets to such vendor or distributor. [L. '39, Ch. 88, § 4, amending R. C. M. 1935, § 3595. Approved and in effect March 1, 1939.

Section 10 repeals conflicting laws.

3596. Violations of act—penalty. Any person, firm, or corporation who sells, offers or exposes for sale or distribution in the state any agricultural seeds for seeding purposes,

without complying with the requirements of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25.00), nor more than one hundred dollars (\$100.00) and costs of such prosecution, and upon conviction of the second or any subsequent offense shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) and costs of such prosecution. [L. '39, Ch. 88, § 5, amending R. C. M. 1935, § 3596. Approved and in effect March 1, 1939.]

Section 10 repeals conflicting laws.

3597. Inspection of seeds—director of grain inspection laboratory—commissioner of agriculture—powers and duties—enforcement of act—rules and regulations. The director of the Montana grain inspection laboratory, of the Montana agricultural experiment station, his agent, or agents, shall inspect, examine, or make analyses of and test seeds sold, offered or exposed for sale in the state at such time and place and to such an extent as he and the commissioner of agriculture may determine. When said Montana grain inspection laboratory shall find by its examinations, analyses, or test that any person, firm or corporation has violated any of the provisions of this act, it shall give notice of such violations to the vendor or consignee of said lot of seed and at the same time mail a copy of such notice to the person, firm or corporation whose tag or label was found affixed thereto. The commissioner [commissioner] of agriculture of the state of Montana shall also be notified of such violation. Such director shall report to the commissioner of agriculture all violations as they appear. He shall also annually and not later than September first, make a report to the commissioner of agriculture of all tests made and the results thereof, which report may be published by the commissioner of agriculture, separately, or along with any other annual or biennial report of the department. Such director, his agent or agents, and the commissioner of agriculture and his authorized representatives shall have free access at all reasonable hours to all premises or structures to make examination of any seeds, or any other premises of any warehouse, elevator, or railway company, and upon tendering payment thereof, at the current value, may take any sample or samples of such seeds.

It is hereby made the duty of the commissioner of agriculture of the department of agriculture, labor and industry to administer and enforce this act. For that purpose, he is hereby empowered to make all proper rules and regulations not inconsistent with this act or any federal laws now in effect or which may hereafter be enacted. The director of the

Montana grain inspection laboratory of the Montana agricultural experiment station shall formulate all necessary and proper rules and regulations relating to all his duties enumerated herein. [L. '39, Ch. 88, § 6, amending R. C. M. 1935, § 3597. Approved and in effect March 1, 1939.]

Section 10 repeals conflicting laws.

3598. Director of grain inspection laboratory—employment of agents—salaries and expenses—cost of publications—source of payment. The director of the Montana grain inspection laboratory, under the direction of the director of the Montana agricultural experiment station, may employ such agents as are deemed necessary to each year inspect, sample and make analysis of any agricultural seed on sale in the state for seeding purposes within the state, and the salaries and necessary expenses of such agents, together with the cost of publishing the findings of such inspections and analyses, shall be paid out of moneys appropriated for the Montana grain inspection laboratory, of the Montana agricultural experiment station. [L. '39, Ch. 88, § 7, amending R. C. M. 1935, § 3598. Approved and in effect March 1, 1939.]

Section 10 repeals conflicting laws.

3599. Testing of seed samples for citizens—charges and fees—disposition thereof. Any citizen of the state of Montana, in accordance with the regulations prescribed by the commissioner of agriculture, by prepaying the transportation charges may send, in one year, five (5) samples of seed to the Montana grain inspection laboratory of the Montana agricultural experiment station for examination, analyses, or test, free of charge. Other samples of seed analyzed and tested for purity and germination, or either, shall be charged for at the rate of fifty cents (50c) each, for unmixed seeds. Samples of mixed seeds analyzed and tested shall be charged for at the rate of seventy-five cents (75c) per hour for the actual time required for making analyses and tests, and all such fees are hereby appropriated for the use and purpose of the Montana grain inspection laboratory of the Montana agricultural experiment station to defray the expenses incurred by said laboratory, under the provisions of this act. [L. '39, Ch. 88, § 8, amending R. C. M. 1935, § 3599, as amended by L. '37, Ch. 192, § 2. Approved and in effect March 1, 1939.]

Section 10 repeals conflicting laws.

3600. Certificate of grain inspection laboratory—evidence—presumption of correctness. The certificate of the Montana grain inspection laboratory of the Montana agricultural experi-

ment station, giving results of any examinations, analyses or tests of any seed samples made under the authority of the commissioner of agriculture of the department of agriculture, labor and industry shall be presumptive evidence of the correctness of the facts therein stated. [L. '39, Ch. 88, § 9, amending R. C. M. 1935, § 3600. Approved and in effect March 1, 1939.

Section 10 repeals conflicting laws.

3601, 3602. Repealed. [L. '39, Ch. 88, § 10. Approved and in effect March 1, 1939.

3603.1. Repealed. [L. '37, Ch. 204, § 8. Approved and in effect March 18, 1937. See § 2649.1n.

3614. Sale of nursery stock — seller to notify commissioner of agriculture or the nearest horticultural inspector — duties of inspector — charges and fees — collection. It shall be the duty of every person or persons, corporation or corporations, who sell or deliver to any person or persons, corporation or corporations, any trees, plants, vines, scions, grafts, fruits or vegetables not previously inspected under the provisions of this act, to notify the commissioner of agriculture, or the nearest horticultural inspector of such sale or delivery. It shall be the duty of the inspector receiving such notice to inspect the said trees, plants, grafts, scions, vines, fruits or vegetables, as soon thereafter as practicable, and if the same be found free from any and all diseases and pests, he shall so certify and attach a certificate of inspection to each lot or bill of trees, plants, scions, grafts, vines, fruits or vegetables, so inspected. But if any of the trees, grafts, scions, vines, plants, fruits or vegetables so inspected shall be found to be diseased or infested with any of the pests mentioned in section 3626, revised codes of Montana, 1935, then the inspector shall order the disinfection or destruction of any of said trees, grafts, scions, vines, plants, fruits or vegetables, so diseased or infested, together with all boxes, wrapping or packing pertaining thereto; provided, that when any fruit or nursery stock, or vegetables is condemned by any inspector, said inspector shall notify the owner thereof, who may appeal to the commissioner of agriculture, whose decision shall be final; and charge and collect the sum of ten (\$10.00) dollars for the inspection of each carload of said nursery stock and a proportionate sum for less than carload lots, as fixed by the commissioner; provided, that the commissioner of agriculture shall have power to designate certain places as quarantine stations where all nursery stock brought into the state shall be inspected and disinfected. The charge for

disinfecting or fumigating of nursery stock, fruits and vegetables shall be fixed by the commissioner of agriculture.

For the inspection of vegetables a fee of two cents (2c) per box or package with a maximum fee of four (\$4.00) dollars for each separate lot or car shall be charged or collected.

For the inspection of fruit a fee of two (2c) cents per box or package, with a maximum fee of five (\$5.00) dollars for each separate lot or car, shall be charged and collected.

The inspector shall collect all such fees and shall not give certificate of inspection until the fees are paid. [L. '39, Ch. 112, § 1, amending R. C. M. 1935, § 3614. Approved and in effect March 3, 1939.

Section 2 repeals conflicting laws.

3617. Removal of infected trees, etc. — condemnation — power of department — cost — lien on land. If any person, firm or corporation, or the legal representative of any person, firm or corporation, owning any orchard, tree, shrub, plant or vines which is known to be infected or infested with any injurious insect pest or disease and which thereby becomes a menace to the agricultural or fruit industry, or a menace to ornamental trees, shrubs, plants or vines of this state, or any city or county thereof, shall fail, refuse or neglect to comply with the instructions of the department of agriculture, labor and industry, or its authorized representative, for the eradication or control of such injurious insect pest or disease, or the destruction of said infested or infected orchard, tree, shrub, plant or vines within the time specified by the said department or its authorized representatives, if in the judgment of said department or its authorized representatives such treatment or destruction shall be deemed necessary, said department or its authorized representative is empowered to condemn, remove or destroy any such orchard, tree, shrub, plant or vines or treat such orchard, tree, shrub, plant or vine, with a proper remedy, and if such owner, or his legal representative shall fail, neglect or refuse to pay the cost of such removal, treatment, or destruction of such orchard, tree, shrub, plant, or vines within thirty days after due notice has been given by mailing to the owner, or his legal representative, at his last known post-office address, then said cost and expense shall become a lien on the land of the owner and shall be added by the county treasurer to the taxes upon said property and collected as other taxes. [L. '39, Ch. 86, § 1, amending R. C. M. 1935, § 3617. Approved and in effect March 1, 1939.

Section 2 repeals conflicting laws.

3626. Infested fruit—importation or sale—evidence of infection—condemnation—processing grown infested fruit—permit. It shall be unlawful for any person, firm or corporation to import into this state, sell, barter or otherwise dispose of, or offer for sale, or have in his possession for the purpose of sale or barter, any fruit or vegetable which is or has been infested with San Jose scale, or the larvae of the codling moth, or other insect pest or disease dangerous to agriculture; and the fact that any fruit or vegetable bears the mark of any such insect, or is worm eaten by the larvae of the codling moth, or shows the effect of disease, shall be deemed conclusive evidence that the fruit or vegetables is infected within the meaning of this section, and may be condemned and confiscated by any legal horticultural inspector; provided that nothing in this section shall be construed to prevent the growers of such infected fruit or vegetable from manufacturing the same into a by-product, or selling and shipping the same to a by-product factory, after first having obtained a written permit so to do from a horticultural inspector. [L. '39, Ch. 90, § 1, amending R. C. M. 1935, § 3626. Approved and in effect March 1, 1939.]

Section 2 repeals conflicting laws.

3633.4. Farm products—grading and branding—grades—seed products—U. S. commercial grades—Montana combination grade. (a) It shall be unlawful for any person, firm, association, organization, corporation or their agents or representatives or assistant of any person, firm, association, organization or corporation to pack for sale, expose for sale, or sell, transport, deliver or consign, or have in possession for sale, transport, delivery or consignment in interstate or intrastate commerce, farm products prepared for market which are not graded and branded to meet the requirements of the grade declared. The grade declared shall conform to the provisions of this act.

(b) Provided that farm products not conforming to established grades may be sold if labeled, tagged or branded in the same manner as graded products, except that in place of specifying the grade, the word "culls" or "unclassified" shall be used.

(c) Provided that all products branded "unclassified" must contain at least fifty per cent (50%) of products which would grade United States No. 2, or better.

(d) Provided further that farm products for seed purposes may be sold when graded under rules approved by the commissioner of agriculture and plainly labeled, tagged or branded "For Seed Purposes."

(e) Provided further that U. S. commercial grade shall not be a standard grade in the state of Montana.

(f) That potatoes graded to contain one-half (50 per cent) that shall meet all the requirements of U. S. No. 1, and the remaining one-half that shall meet the size requirements of U. S. No. 1 and the quality requirements of U. S. No. 2 grade, may be classified and sold as Montana combination grade. This grade may not contain more than five per cent by weight, that are below the prescribed size, nor more than six per cent that are below the quality requirements of the U. S. No. 2 grade, nor more than one per cent affected by soft rot. Provided further, that none of the above named tolerances shall apply to the one-half that meet all the requirements of U. S. grade No. 1, but shall apply only to the remaining half. [L. '37, Ch. 71, § 1, amending R. C. M. 1935, § 3633.4. Approved and in effect March 1, 1937.]

Section 2 repeals conflicting laws.

3635.1. Federal fair labor standards act—enforcement—duty of department to cooperate with federal department of labor—expenses—reimbursement. The department of agriculture, labor and industry through the division of labor and publicity, may, and it is hereby authorized to assist and cooperate with the wage and hour division, and the children's bureau, U. S. department of labor, in the enforcement within this state of the fair labor standards act of 1938, approved June 25, 1938, and, subject to the regulations of the administrator of the wage and hour division or the chief of the children's bureau, as the case may be, and the laws of the state applicable to the receipt and expenditure of moneys, may be reimbursed by said wage and hour division, or said children's bureau, for the reasonable cost of such assistance and cooperation. [L. '39, Ch. 56, § 1. Approved and in effect February 24, 1939.]

3649.1a. Mustard seed—purchasers of crop before harvest—bond—license—fee. All persons, firms, co-partnerships, corporations and associations engaging in the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of said crop or crops, shall, on or before the first day of March of each year, pay to the state treasurer of Montana a license fee in the sum of ten dollars (\$10.00) for the privilege of carrying on such business, and shall on or before said first day of March of each year, give a bond with good and sufficient sureties approved by the commissioner of agriculture of the state of Montana, in such sum as the commissioner may require but not less

than ten thousand dollars (\$10,000.00) conditioned upon the payment for such contracted seed at the price or prices specified in such contract, and upon the payment of such license fee of ten dollars (\$10.00) and upon the approval of such bond by the commissioner of agriculture, said commissioner shall issue to such person or persons, firm, co-partnership, corporation or association a license to engage in such business in the state of Montana for a period of one year.

Any person who shall commence the business aforesaid after the first day of March of any year shall be required to pay said license fee and to furnish such bond before engaging in or carrying on such business. [L. '39, Ch. 64, § 1. Approved and in effect February 27, 1939.

3649.1b. Same — enforcement of act — duty of commissioner of agriculture — rules and regulations. It is hereby made the duty of the commissioner of agriculture to administer and enforce this act, and for that purpose he shall make all necessary and proper rules and regulations. [L. '39, Ch. 64, § 2. Approved and in effect February 27, 1939.

3649.1c. Same — license fees — disposition. All funds accruing from license fees shall be deposited by the commissioner of agriculture with the state treasurer and shall be credited to the revolving fund of the grain division of the department of agriculture, labor and industry. [L. '39, Ch. 64, § 3. Approved and in effect February 27, 1939.

3649.1d. Same — licenses — revocation — reports by licensees. The commissioner of agriculture may revoke for cause any license issued hereunder, and any person, firm, co-partnership, corporation or association licensed under the provisions of this act shall make a report to the commissioner of agriculture whenever he may require the same showing the amount of seed contracted. [L. '39, Ch. 64, § 4. Approved and in effect February 27, 1939.

3649.1e. Same — violation of act—penalties. Any person, firm, co-partnership, corporation, or association who shall engage in or carry on the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of said crop or crops, without having license therefor shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), and each and every day that such business is so carried on or engaged in shall constitute a separate offense.

[L. '39, Ch. 64, § 5. Approved and in effect February 27, 1939.

Section 7 repeals conflicting laws.

3649.1f. Hay dealers—regulation—license—necessity. It shall be unlawful for any person, firm or corporation to buy, or offer to buy, for the purpose of resale any hay, unless he shall have first obtained from the commissioner of agriculture, labor and industry of the state of Montana, a license permitting such person, firm or corporation to engage in the business of buying and selling hay at wholesale within the state of Montana. [L. '37, Ch. 204, § 1. Approved and in effect March 19, 1937.

3649.1g. Same — bond — necessity. No person, firm, or corporation shall be eligible to receive or obtain such license unless he shall first file with such commissioner a bond running to the state of Montana for the benefit of the growers of hay, dealing or who may deal with such licensee, conditioned on the faithful performance by such licensee of all contracts made by him for the purchase of hay from the growers thereof. [L. '37, Ch. 204, § 2. Approved and in effect March 19, 1937.

3649.1h. Same — dealer's bond — penal sum — how determined — minimum. The bond provided for in the preceding section shall be in such penal sum as said commissioner shall determine, based upon the estimated amount of business to be done by the licensee, during the year for which said license is to be issued; provided, however, that said bond shall be in a sum of not less than one thousand dollars (\$1000.00). [L. '37, Ch. 204, § 3. Approved and in effect March 19, 1937.

3649.1i. Same — license — term — fee. The license herein provided for shall be an annual license and shall be valid for the calendar year in which issued, and shall be issued only upon the payment of the sum or fee of fifteen dollars (\$15.00). [L. '37, Ch. 204, § 4. Approved and in effect March 19, 1937.

3649.1j. Same—commissioner of agriculture — powers and duties — rules and regulations. The commissioner of agriculture, labor and industry shall have the right, and it shall be his duty, to make reasonable rules and regulations with reference to the form of application, the terms of the bond, and the form of license hereunder, as convenience and good practice may require, and for the enforcement of this act. [L. '37, Ch. 204, § 5. Approved and in effect March 19, 1937.

3649.1k. Same — false representation as to quality of hay — inspection. It shall be unlawful for any person, firm or corporation to

advertise, represent, or hold out any hay for sale as of the quality or as meeting the requirements of section 4229, revised codes of Montana, 1935, unless such hay shall actually meet and conform to the requirements thereof; provided that it shall be optional for any grower of hay or any dealer therein to cause to be inspected or graded any hay which he may sell or offer for sale, or which he may buy or offer to buy. [L. '37, Ch. 204, § 6. Approved and in effect March 19, 1937.]

3649.1m. Same—section 2443.3 not applicable to hay. Section 2443.3 of the revised codes of Montana, 1935, shall not apply nor be construed to apply to hay. [L. '37, Ch. 204, § 7. Approved and in effect March 19, 1937.]

3649.1n. Same—repeals. Sections 4230 and 3608.1 of the revised codes of Montana, 1935, and all acts and parts of acts in conflict herewith are hereby repealed. [L. '37, Ch. 204, § 8. Approved and in effect March 19, 1937.]

CHAPTER 306A

MONTANA AGRICULTURAL CONSERVATION ACT

Section

- 3649.4. Short title of act.
- 3649.5. Public policy—declaration.
- 3649.6. Acts of congress—acceptance—cooperation with federal government—powers conferred by act—not to discourage production—national supply.
- 3649.7. Definitions.
- 3649.8. Establishment of Montana agricultural conservation board—producer members—eligibility—recommendations.
- 3649.9. Designation of state board as state agency.
- 3649.10. Agricultural district—representatives—boundaries—change.
- 3649.11. Community and county committees—associations—executive board.
- 3649.12. Appointment of members of the state board—terms—producer member—recommendations—appointment—vacancies—time of recommendation or appointment.
- 3649.13. Formulation and administration of state agricultural plans—county committee—participation—scope—educational programs—expenditures—investigations.
- 3649.14. Receipt and disbursement of funds—grants—state treasurer to receive—administration fund—conservation fund—expenditures—board compensation—accounts—employees' bonds.
- 3649.15. Additional powers and duties of the state committee—board's executive secretary—other employees—other state agencies' assistance—rules and regulations—powers of board.
- 3649.16. Reports—participating agencies.
- 3649.17. Effective date of act.

3649.4. Short title of act. This act may be known and cited as the Montana Agricultural Conservation Act. [L. '37, Ch. 134, § 1. Approved March 16, 1937.]

3649.5. Public policy—declaration. It is hereby recognized and declared: That the soil resources and fertility of the land of this state and the economic use thereof; the prosperity of the farming industry are matters of public interest; that the public welfare has been impaired by destruction of its soil fertility by reason of wasteful exploitation and unscientific use of soil resources and by wasteful use of the waters and water courses of the state, thus decreasing the purchasing power and the net income of the agricultural industry; that the said evils are interrelated with similar conditions existent in other states, all of which conditions require action by this state in cooperation with governmental agencies of the United States and of other states in order to secure the aid and assistance of such governmental agencies in pursuance of the soil conservation and domestic allotment act or acts amendatory thereto, calculated to remedy existing conditions and to advance the public welfare of this state. [L. '37, Ch. 134, § 2. Approved March 16, 1937.]

3649.6. Acts of congress—acceptance—cooperation with federal government—powers conferred by act—not to discourage production—national supply. In order to effectuate and carry out the declared policy of this act and to enable this state to avail itself of the provisions of the acts of congress, to cooperate with the president of the United States, any department, board or agency thereof; by aiding in the preservation and improvement of soil fertility, the economic use and conservation of land by eliminating the wasteful and unscientific use of the soil resources, against the results of soil erosion; in the re-establishment and maintenance of the purchasing power of persons engaged in pursuit of the agricultural industry, the state of Montana hereby assents to and accepts the provisions of the acts of congress and grants for such objects and adopts the policy and purpose of cooperating with the federal government and agencies of other states in the accomplishment of the purposes specified in any act of congress subject however to the following limitations:

(1) The powers conferred in this act shall be used to assist voluntary action calculated to effectuate such purposes.

(2) Such powers shall not be used to discourage the production of supplies of foods and fibers in this state sufficient when taken together with the production thereof in all other states of the United States to maintain normal

domestic human consumption as determined by the secretary of agriculture of the United States from the records of consumption in the years 1920 to 1929, inclusive, taking into consideration increased population, quantities of any commodities that were forced into domestic consumption by a declining in exports of particular commodities, and the quantities of substitutes available for domestic consumption within any general class of food commodities.

(3) In carrying out the purposes specified in this section due regard shall be given to the maintenance of a continuous and stable national supply of agricultural commodities adequate to meet consumer demand at prices fair to both producers and consumers. [L. '37, Ch. 134, § 3. Approved March 16, 1937.]

3649.7. Definitions. (a) The term "person" as used in this act, unless the context otherwise requires, includes an individual corporation, partnership, firm, business trust, joint stock company, association, syndicate, group, pool, joint venture, and any other unincorporated association or group.

(b) The expression "other states of the United States" as used in this act shall include Alaska, Hawaii, and Puerto Rico.

(c) The term "state agricultural districts" shall mean such districts as herein designated including the various counties of the state.

(d) The term "county associations" shall mean the representative association of the several community groups of the several community districts of such county. [L. '37, Ch. 134, § 4. Approved March 16, 1937.]

3649.8. Establishment of Montana agricultural conservation board — producer members — eligibility — recommendations. (a) There is hereby established a board of seven members which shall be known as the Montana agricultural conservation board and which shall be referred to hereinafter as the "state board".

(b) Six members of the state board shall be persons experienced and actually engaged in the production of agricultural commodities, selected as provided in section 9 [3649.12], and shall be referred to hereinafter as "producer member".

No person shall be eligible for appointment as a producer member of the state board unless he is of legal age, a citizen of the state, a resident of the district which he represents and a producer of the commodity for which his district is hereinafter designated and who shall have been duly recommended to the governor for such membership by the chairman of county committees of the several counties which comprise his district as provided in sec-

tion 9 [3649.12]; nor shall any person be appointed as a producer member if he is a resident in the same state agricultural district established pursuant to section 7 [3649.10] hereof, as any producer member whose term includes any part of the term of such person.

(c) One member of the state board shall be appointed by the governor from two nominees of the state agricultural college recommended to him by the president of the state agricultural college. [L. '37, Ch. 134, § 5. Approved March 16, 1937.]

3649.9. Designation of state board as state agency. The state board is hereby designated and authorized as the state agency of this state to carry out the policy and purposes of this act and to formulate and administer state plans pursuant to the terms of this act. [L. '37, Ch. 134, § 6. Approved March 16, 1937.]

3649.10. Agricultural districts—representatives — boundaries — change. The agricultural districts of the state shall be constituted as follows:

District No. 1 shall comprise the counties of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Deer Lodge, Granite and Ravalli, with the meeting center thereof at the city of Missoula. The board member therefrom shall be designated as the diversified farming representative.

District No. 2 shall comprise the counties of Glacier, Pondera, Teton, Cascade, Toole, Liberty, Hill, Chouteau, Blaine and Phillips, with the meeting center thereof at the city of Havre. The board member therefrom shall be designated as a grain producing representative.

District No. 3 shall comprise the counties of Valley, Daniels, Sheridan, Roosevelt, McCone, Richland, Dawson, Prairie, Wibaux and Fallon, with the meeting center thereof at the city of Culbertson. The board member therefrom shall be designated as the grain producing representative.

District No. 4 shall comprise the counties of Lewis and Clark, Jefferson, Silver Bow, Beaverhead, Madison, Gallatin, Broadwater and Meagher, with the meeting center thereof at the city of Bozeman. The board member therefrom shall be designated as the sheep producing representative.

District No. 5 shall comprise the counties of Judith Basin, Fergus, Wheatland, Golden Valley, Musselshell, Yellowstone, Stillwater, Sweet Grass, Park and Carbon with the meeting center thereof at the city of Billings. The board member therefrom shall be designated as a grain producing representative.

District No. 6 shall comprise the counties of Petroleum, Garfield, Rosebud, Custer, Treasure, Big Horn, Powder River and Carter with the meeting center thereof at the city of Miles City. The board member therefrom shall be designated as the cattle producing representative.

The state board may modify, revise or change the boundaries and center meeting place of such state agricultural districts whenever it deems such revision, modification or change is necessary either to cause such districts to conform to said standards or to provide for the more substantial or more efficient accomplishment of the purposes of this act, provided that such modification, change, or revision be first approved by the particular district or districts affected thereby. [L. '37, Ch. 134, § 7. Approved March 16, 1937.]

3649.11. Community and county committees — associations — executive board. As soon as practicable after its organization, the state board shall by rules and regulations provide:

(1) For the organization within each community of a voluntary association in which all agricultural producers who are citizens of this state and residents in such community shall be entitled to participation; for the selection by each such association of a community committee composed of three members of such association; and for the selection of a chairman of each such community committee.

(2) The chairmen of the several community districts shall constitute the executive board of the county association and shall select from their own members a president, vice-president and a third member who shall constitute the county committee. [L. '37, Ch. 134, § 8. Approved March 16, 1937.]

3649.12. Appointment of members of the state board—terms—producer member—recommendations—appointment—vacancies—time of recommendation or appointment. (a) Within thirty (30) days after the effective date of this act, the governor shall advise the several county chairmen of the state, to convene in their respective district meeting centers, for the purpose of submitting in writing the names of two qualified representative persons as herein provided from whom the governor shall, at as early date as consistent, select one member to represent each of the state districts as herein provided. The term of such district representative member shall be as follows: Members of odd numbered districts for a term ending on the 31st of December of the year succeeding the date of their appointment; members of the even numbered districts for a term ending on the 31st of December of the current year of the date of their appointment.

(b) On the second Monday of October of each succeeding calendar year the chairmen of the county committees of the various state agricultural districts shall convene at their respective state district meeting center for the purpose of recommending to the governor in writing two persons, eligible for appointment under the provisions of this act as a producer member of the state committee to succeed the member whose term expires at the end of the year then current. Prior to December 31st of each such year the governor shall appoint from among the persons so recommended one producer member of the state board for a term of two years commencing January 1st of the next succeeding year and until his successor is appointed and qualified.

(c) If a vacancy occurs in the office of any producer member of the state board, the chairmen of the county committees of the state agricultural district so affected shall, within thirty (30) days after the occurrence of such vacancy, recommend to the governor in writing two persons eligible under the provisions of this act for appointment to fill such vacancy for the remainder of the unexpired term. Within thirty (30) days after the receipt of such recommendation, the governor shall appoint one of the persons so recommended as a member of the state committee for the unexpired term.

(d) The provisions of this section, with respect to the time within which recommendations or appointments are to be made, shall be construed as directory and not mandatory, and no appointment made hereunder shall be held invalid by reason of being made after the time prescribed herein or because any recommendation was made in connection therewith after the time provided herein. [L. '37, Ch. 134, § 9. Approved March 16, 1937.]

3649.13. Formulation and administration of state agricultural plans — county committee — participation — scope — educational programs — expenditures — investigations. (a) The state board is authorized and directed to formulate for each calendar year, and to submit to the secretary of agriculture of the United States for and in the name of this state, a state plan for carrying out the purpose of this act during such calendar year. In formulating the provisions of such state agricultural plans of [?] the state committee shall consult with the several county agricultural conservation associations and such other agencies of this state as may be proper and qualified to assist therein.

(b) The state board is authorized to modify or revise any such agricultural plan in whatever manner, consistent with the terms of this

act, it finds necessary in order to provide for more substantial furtherance of the accomplishment of the purposes of this act.

(c) Each such agricultural plan shall provide for such participation in its administration by such voluntary county and community committees, or associations of agricultural producers, organized for such purposes, as the state board determines to be necessary or proper for the effective administration of the agricultural plan.

(d) Each such agricultural plan shall provide, through agreements, with agricultural producers or through other voluntary methods, for such adjustments in the utilization of land, in farming practices, and in the acreage or in the production for market, or both, of agricultural commodities, as the state committee determines to be calculated to effectuate as substantial accomplishment of the purposes of this act, as may reasonably be achieved through action of this state, and for payments to agricultural producers in connection with such agreements or methods, in such amounts as the state committee determines to be fair and reasonable and calculated to promote such accomplishment of the purposes of this act without depriving such producers of a voluntary and uncoerced choice of action.

(e) Any such agricultural plan shall provide for such educational programs, with the assistance of the state agricultural college and others, as the state board determines to be necessary or proper to promote the more substantial accomplishment of the purposes of this act.

(f) Each such agricultural plan shall contain an estimate of expenditures necessary to carry out such agricultural plan together with a statement of such amount as the state board determines to be necessary to be paid by the secretary of agriculture of the United States as a grant in aid of such agricultural plan under section 7 [3649.10] of the soil conservation and domestic allotment act, in order to provide for the effective carrying out of such agricultural plan, and shall designate the amount and due date of each installment of such grant, the period to which each such installment relates, and the amount determined by the state committee to be necessary for carrying out such agricultural plan during such period.

(g) The state board shall provide for such investigations as it finds to be necessary for the formulation and administration of such agricultural plans. [L. '37, Ch. 134, § 10. Approved March 16, 1937.]

3649.14. Receipt and disbursement of funds — grants — state treasurer to receive — administration fund — conservation fund — expenditures — board compensation — accounts — employees' bonds. (a) The state treasurer is hereby authorized and empowered to receive on behalf of this state all grants of money or other aid made available from any source to assist the state in carrying out the policy and purposes of this act. All such money or other aid, together with any moneys appropriated or other provision made by this state for such purpose, shall be forthwith available to the state board as the agency of the state subject, in the case of any funds or other aid received upon conditions, to the conditions upon which such funds or other aid shall have been received, for the purpose of administering this act and may be expended by the state board in carrying out the provisions of this act. Such fund so received by the state treasurer shall be deposited in a fund designated the "state agricultural conservation fund" and shall be subject to withdrawal for the purpose of carrying out the provisions of this act, by the state agricultural conservation board in the manner and form as provided by the agricultural department of the United States or its duly authorized agency.

(b) Subject to any conditions upon which any such money or other aid is made available to the state and to the terms of any applicable agricultural plan made effective pursuant to this act, such expenditures may include, but need not be limited to, expenditures for administrative expenses, equipment, cost of research and investigation, cost of educational activities, reimbursement to other state agencies or to voluntary community committees or county associations of agricultural producers for costs to such agencies, committees, or associations of assistance in the administration of this act, requested in writing by the state board and rendered to the state board, payments to agricultural producers provided for in any agricultural plan made effective pursuant to this act, salaries of employees, and all other expenditures requisite to carrying out the policy and purposes of this act, including compensation of ten (\$10.00) dollars per diem for the members of said state board when engaged upon their official business in performance of their duties under this act and including traveling expenses of five (5c) cents per mile of the members of said state board and the employees of said state board in connection with their said duties; provided, that no member of the state board shall be entitled to receive compensation for more than ninety (90) days' service in any one calendar year.

(c) The state board shall provide for the keeping of full and accurate accounts, showing all receipts and expenditures of moneys, securities, or other property received, held, or expended under the provisions of this act and shall provide for the auditing of all such accounts and for the execution of surety bonds for all employees entrusted with moneys or securities under the provisions of this act. [L. '37, Ch. 134, § 11. Approved March 16, 1937.]

3649.15. Additional powers and duties of the state committee — board's executive secretary — other employees — other state agencies' assistance — rules and regulations — powers of board. (a) The state board shall employ an executive secretary who shall be in charge of the office of the state board and shall perform dual duties as are directed by the board. Such employment of the executive secretary shall be at the pleasure of the board, and shall be a person other than a member of said board. The executive secretary and other necessary employees shall receive such compensation as may be fixed by the board. The state board shall utilize such available services and assistance of other state agencies and of voluntary county and community committees and associations of agricultural producers as it determines to be necessary or calculated to assist substantially in the effective administration of this act.

(b) The state board shall have authority to make such rules and regulations, consistent with the provisions of this act, and to do any and all other acts consistent with the provisions of this act which it finds to be necessary or proper for the effective administration of this act.

(c) The state board shall have power and authority to obtain, by lease or purchase, such equipment, office accommodations, facilities, services, and supplies, and to employ such technical or legal experts or assistants and such other employees, including clerical and stenographic help as it determines to be necessary or proper to carry out the provisions of this act, and to determine the qualifications, duties, and compensation of such experts, assistants and other employees.

(d) All other agencies of this state are hereby authorized to assist the state board in carrying out the provisions of this act upon written request and in any manner determined by the state board to be necessary or appropriate for the effective administration of this act. [L. '37, Ch. 134, § 12. Approved March 16, 1937.]

3649.16. Reports — participating agencies. The state board shall compile or require to be made such reports as it determines to be necessary or proper in order to ascertain whether any plans provided for in this act are being carried out according to their terms. The state board shall provide for compliance on the part of all persons and agencies participating in the administration of any such plan with such requirements and may make, or cause to be made, such investigations as it determines to be necessary or proper to assure the correctness of and to make possible the verification of such reports. [L. '37, Ch. 134, § 13. Approved March 16, 1937.]

3649.17. Effective date of act. This act shall take effect upon its passage and approval by the governor and after the receipt of notification by the governor from the federal administration of the agricultural conservation and domestic allotment act that the administration of the provisions of the act within the state of Montana has by and with the approval of such federal agency been released to the Montana agricultural conservation board for the administration of the provisions of such act in cooperation with such federal agency. Upon receipt of such notification the governor of Montana shall by proclamation declare this act to be in full force and effect. [L. '37, Ch. 134, § 16. Approved March 16, 1937.]

Section 14 is partial invalidity saving clause.

Section 15 repeals conflicting laws.

CHAPTER 306B

STATE SOIL CONSERVATION DISTRICTS LAW

Section

- 3649.18. Short title.
- 3649.19. Legislative determinations and declaration of policy.
 - A. The condition.
 - B. The consequences.
 - C. The appropriate corrective methods.
 - D. Declaration of policy.
- 3649.20. Definitions.
- 3649.21. State soil conservation committee.
 - A. Establishment — personnel — records — seal — powers and duties.
 - B. Authority and privileges — employees — legal service — offices — state institutions and agencies — cooperation.
 - C. Chairman — farmer members — quorum — compensation of members — expenses — bonds of officers and employees — records of proceedings — audit.
 - D. Additional duties and powers.

Section

- 3649.22. Creation of soil conservation districts.
- A. Petitioners — petition — contents — consolidation of petitions.
 - B. Hearing — notice — matters to be considered — subsequent petitions.
 - C. Referendum — notice — ballots — form.
 - D. Referendum — duty of committee.
 - E. Practicability of proposed district — determination — matters to be considered — required percent of votes in favor of district.
 - F. Supervisors — district as governmental subdivision — proceedings to make — application to secretary of state — recitals — duty of secretary — certificate of due organization of district.
 - G. Denial of petition — subsequent petitions.
 - H. Inclusion of additional territory — petitions.
 - I. Secretary of state's certificate — judicial effect.
- 3649.23. Election of supervisors for each district — who eligible to vote.
- 3649.24. Supervisors — election — terms — vacancies — quorum — compensation — expenses — employees — legal services — powers and duties — delegation to chairman — surety bonds of employees — records — removal — consultations.
- 3649.25. Powers of districts and supervisors.
- 3649.26. Adoption of land use regulations — proposed ordinances — submission to voters — votes required for approval — amendment or repeal — regulations — what included — uniformity.
- 3649.27. Performance of work under the regulations by the supervisors — regulations — non-observance — proceeding in district court.
- 3649.28. Board of adjustment.
- A. Supervisors to establish — membership — appointment — vacancies — compensation — expenses.
 - B. Organization and duties of board.
 - C. Variance from regulations — petition by land occupier for permission — hearing and notice — power of board in respect thereto.
 - D. Review in district court — power to grant relief.
- 3649.29. Cooperation between districts.
- 3649.30. State agencies to cooperate.
- 3649.31. Discontinuance of districts — procedure — disposition of property — certificate of dissolution — unexecuted contracts remain in force.
- 3649.32. Disposition of funds.
- A. Allocation to districts — use thereof.
 - B. Allocation according to acreage — other methods — retention of funds by committee — subsequent allocations.
 - C. Requests for appropriations by committee — application of budget act — information to be given in request.
- 3649.33. Partial invalidity saving clause.
- 3649.34. Inconsistency with other acts.
- 3649.35. Repeal.

3649.18. Short title. This act may be known and cited as "the state soil conservation districts law." [L. '39, Ch. 72, § 1. Approved and in effect February 28, 1939.]

3649.19. Legislative determinations and declaration of policy. It is hereby declared, as a matter of legislative determination:

A. The condition. That the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest-cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

B. The consequences. That the consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams and ditches; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops and range cover grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought and causes crop and range vegetation cover failures; and increase in the speed and volume of rainfall run-off, causing severe and increas-

ing floods, which bring suffering, disease, and death; impoverishment of families attempting to operate eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms, and losses in municipal water supply, irrigation developments, farming and grazing.

C. The appropriate corrective methods.

That to conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state. [L. '39, Ch. 72, § 2. Approved and in effect February 28, 1939.]

3649.20. Definitions. Wherever used or referred to in this act, unless a different meaning clearly appears from the context:

(1) "District" or "soil conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;

(2) "Supervisor" means one of the members of the governing body of a district,

elected or appointed in accordance with the provisions of this act;

(3) "Committee" or "state soil conservation committee" means the agency created in section 4 [3649.21] of this act;

(4) "Petition" means a petition filed under the provisions of sub-section A of section 5 [3649.22] of this act for the creation of a district;

(5) "Nominating petition" means a petition filed under the provisions of section 6 [3649.23] of this act to nominate candidates for the office of supervisor of a soil conservation district;

(6) "State" means the state of Montana;

(7) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;

(8) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America;

(9) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise of either of them;

(10) "Land occupier" or "occupier of land" includes any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this act, whether as owner, lessee, renter, tenant, or otherwise;

(11) "Due notice" means notice published at least twice, with an interval of at least fourteen (14) days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area, or by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates. [L. '39, Ch. 72, § 3. Approved and in effect February 28, 1939.]

3649.21. State soil conservation committee.

A. Establishment — personnel — records — seal — powers and duties. There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this act, the state soil conservation com-

mittee. The state soil conservation committee shall consist of seven (7) members. The following shall serve as members of the committee: The director of the state agricultural experiment station at Bozeman, Montana; the director of the state extension service at Bozeman, Montana; one member of the state grazing commission designated by that commission; one member of the water conservation board designated by that board and the commissioner of the state department of agriculture. Two (2) additional farmer members shall be chosen by the governor, one from each of a group of five (5) to be submitted by each of the two (2) leading farm organizations. The committee may invite the secretary of agriculture of the United States of America to appoint one person to serve with the above-mentioned members as a non-voting member of the committee. The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this act.

B. Authority and privileges — employees — legal service — offices — state institutions and agencies — cooperation. The state soil conservation committee may employ an administrative officer and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. The committee may call upon the state for such legal services as it may require, or may employ its own counsel and legal staff. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations at the state college at Bozeman, Montana, and shall be furnished with the necessary supplies and equipment. Upon request of the committee for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

C. Chairman — farmer members — quorum — compensation of members — expenses — bonds of officers and employees — records of proceedings — audit. The committee shall

annually elect a chairman from its own membership. State committeemen shall continue as members of the state committee so long as they shall retain the offices by virtue of which they shall be serving on the committee. The appointed farmer members shall hold office for four (4) years and their term of office shall be concurrent with the governor. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. Ex-officio members of the committee shall receive no compensation for their services on the committee. Other members of the committee shall receive five dollars (\$5.00) per day while on duty. All members of the state committee shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the account of receipts and disbursements.

D. Additional duties and powers. In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs;

(2) To keep the supervisors of each of the several districts organized under the provisions of this act informed of the activities and experiences of all other districts organized hereunder, and to facilitate an interchange of advice and experiences between such districts and cooperation between them;

(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation;

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts;

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable. [L. '39, Ch. 72, § 4. Approved and in effect February 28, 1939.]

3649.22. Creation of soil conservation districts. A. Petitioners — petition — contents — consolidation of petitions. Any ten (10) occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation committee asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

- (1) The proposed name of said district;
- (2) That there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory described in the petition;
- (3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate;
- (4) A request that the state soil conservation committee duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the state soil conservation committee may consolidate all or any of such petitions.

B. Hearing — notice — matters to be considered — subsequent petitions. Within thirty (30) days after such a petition has been filed with the state soil conservation committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this act, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the committee shall determine,

upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determinations and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in section 2 [3649.19] of this act. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six (6) months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearing held and determinations made thereon.

C. Referendum — notice — ballots — form. After the committee has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this act is administratively practicable and feasible. To assist the committee in the determination of such administrative practicability and feasibility, it shall be the duty of the committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposi-

tion of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county(ies) of....., and," and "Against creation of a soil conservation district of the lands below described and lying in the county(ies) of and....." shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. All occupiers of lands lying within the boundaries of the territory, as determined by the state soil conservation committee, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

D. Referendum — duty of committee. The committee shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

E. Practicability of proposed district — determination — matters to be considered — required percent of votes in favor of district. The committee shall publish the result of such referendum and shall thereafter consider, and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the atti-

tudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in section 2 [3649.19] of this act; provided, however, that the committee shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least sixty-five (65) percent of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

F. Supervisors — district as governmental subdivision — proceedings to make — application to secretary of state — recitals — duty of secretary — certificate of due organization of district. If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act with the three (3) supervisors elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

The two (2) appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals): (1) That a petition for the creation of the district was filed with the state soil conservation committee pursuant to the provisions of this act, and that the proceedings specified in this act were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this act; and that the committee has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of the principal offices of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors

before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the state soil conservation committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the committee did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed sixty-five (65) percent of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible; the said statement shall set forth the boundaries of the district as they have been defined by the committee.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of records in his office. If the secretary of state shall find that the name proposed for the district is identical with that of any other soil conservation district this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil conservation committee, which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors without cost a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The bound-

daries of such district shall include the territory as determined by the state soil conservation committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this act.

G. Denial of petition—subsequent petitions. After six (6) months shall have expired from the date of entry of a determination by the state soil conservation committee that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this act.

H. Inclusion of additional territory — petitions. Petitions for including additional territory within an existing district may be filed with the state soil conservation committee, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The committee shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than ten (10), the petition may be filed when signed by a majority of the occupiers of such area, and in such case no referendum need be held. In referenda upon petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

I. Secretary of state's certificate — judicial effect. In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of this act upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof. [L. '39, Ch. 72, § 5. Approved and in effect February 28, 1939.]

3649.23. Election of supervisors for each district — who eligible to vote. Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the state soil conservation committee to nominate candidates for supervisors of such districts. The com-

mittee shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the committee unless it shall be subscribed by ten (10) or more occupiers of lands lying within the boundaries of such district. Land occupiers may sign more than one such nominating petition to nominate more than one candidate for supervisor. The committee shall give due notice of an election to be held for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated, shall be printed, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three (3) names to indicate the voter's preference. All occupiers of lands lying within the district shall be eligible to vote in such election. Only such land occupiers shall be eligible to vote. The three (3) candidates who shall receive the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district. The committee shall pay all the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of votes therein, and shall publish the results thereof. [L. '39, Ch. 72, § 6. Approved and in effect February 28, 1939.]

3649.24. Supervisors — election — terms — vacancies — quorum — compensation — expenses — employees — legal services — powers and duties — delegation to chairman — surety bonds of employees — records — removal — consultations. The governing body of the district shall consist of five (5) supervisors, elected as provided hereinabove.

The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected and has qualified. Vacancies shall be filled for the unexpired term. The selection of successor to fill an unexpired term, or for a full term shall be by election. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to ex-

penses, including traveling expenses, necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation committee, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as may be required in the performance of its duties under this act.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state soil conservation committee upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. [L. '39, Ch. 72, § 7. Approved and in effect February 28, 1939.]

3649.25. Powers of districts and supervisors. A soil conservation district organized under the provisions of this act shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures; provided, however, that in

order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the districts on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled;

(3) To carry out preventive and control measures within the district, including, but not limited to, engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of section 2 [3649.19] of this act, on lands owned or controlled by this state or any of its agencies with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein, and all such property shall be exempt from taxation by the state or any political subdivision thereof, to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this act;

(6) To make available on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machin-

ery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion;

(7) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this act;

(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable, for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping and range programs, tillage and grazing practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, erosion-control, or erosion-prevention project located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not consistent with this act, to carry into effect its purposes, and powers;

(11) As a condition to the extending of any benefits under this act to, or the performance of work upon, any lands not owned

or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state. [L. '39, Ch. 72, § 8. Approved and in effect February 28, 1939.]

3649.26. Adoption of land use regulations—proposed ordinances—submission to voters—votes required for approval—amendment or repeal—regulations—what included—uniformity. The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the occupiers of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance No., prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No., prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referen-

dum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All occupiers of lands within the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The supervisors shall not have authority to enact such proposed ordinance into law unless at least sixty-five (65) percent of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by sixty-five (65) percent of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinance adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

Any occupier of land within such district may at any time file a petition with the supervisors asking that any or all of the land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed, except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six (6) months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

1. Provisions requiring the carrying out of necessary engineering operations, including the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, fences, and other necessary structures;

2. Provisions requiring observance of particular methods of cultivation or grazing, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation and reforestation;

3. Specifications of cropping and range programs and tillage and grazing practices to be observed;

4. Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

5. Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in section 2 [3649.19] of this act.

The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, grazing and cropping programs, and tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of lands lying within the district. [L. '39, Ch. 72, § 9. Approved and in effect February 28, 1939.]

3649.27. Performance of work under the regulations by the supervisors — regulations — non-observance — proceeding in district court.

The supervisors shall have authority to go upon any lands within the district after a complaint shall have been filed with the supervisors charging a violation of the regulations, to determine whether land-use regulations adopted under the provisions of section 9 [3649.26] of this act are being observed. Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in any ordinance adopted in accordance with the provisions of section 9 [3649.26] hereof are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands, and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the district court of the county in which the lands of the defendant may lie, a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant land occupier to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such non-observance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the

district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the occupier of such land. Upon the presentation of such petition, the court shall cause process to be issued against the defendant, and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may dismiss the petition; or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five (5) per centum per annum, from the occupier of such lands. In all cases where the person in possession of lands, who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five (5) per centum per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. [L. '39, Ch. 72, § 10. Approved and in effect February 28, 1939.]

3649.28. Board of adjustment. A. Supervisors to establish — membership — appointment — vacancies — compensation — expenses. Where the supervisors of any district organ-

ized under the provisions of this act shall adopt an ordinance prescribing land-use regulations in accordance with the provisions of section 9 [3649.26] hereof, they shall further provide by ordinance for the establishment of a board of adjustment. Such board of adjustment shall consist of three (3) members, each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively. The members of each such board of adjustment shall be appointed by the state soil conservation committee, with the advice and approval of the supervisors of the district for which such board has been established, and shall be removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, such hearing to be conducted jointly by the state soil conservation committee and the supervisors of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant. Members of the state soil conservation committee and the supervisors of the district shall be ineligible to appointment as members of the board of adjustment during their tenure of such other office. The members of the board of adjustment shall receive compensation for their services at the rate of four dollars (\$4.00) per diem for time spent on the work of the board, in addition to expenses, including traveling expenses, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board, upon the certificate of the chairman of the board.

B. Organization and duties of board. The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this act and with provisions of any ordinance adopted pursuant to this section. The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two (2) members of the board shall constitute a quorum. The chairman, or in his absence, such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

C. Variance from regulations — petition by land occupier for permission — hearing and notice — power of board in respect thereto. Any land occupier may file a petition with the board of adjustment, alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors, and praying the board to authorize a variance from the terms of the land-use regulations in the lands occupied by the petitioner. Copies of such petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the chairman of the state soil conservation committee. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The supervisors of the district and the state soil conservation committee shall have the right to appear and be heard at such hearing. Any occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at such hearing the board shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship. Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

D. Review in district court — power to grant relief. Any petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, the supervisors of the district or any intervening party, may obtain a review of such order in any district court of the county in which the lands of the petitioner may lie, by filing in such court a petition praying that the order of the board be modified or set aside. A copy of such petition shall forthwith be served upon

the parties to the hearing before the board and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered, and the findings, determination, and order of the board. Upon such filing, the court shall cause notice thereof to be served upon the parties and shall have jurisdiction of the proceedings and of the questions determined or to be determined therein, and shall have power to grant such temporary relief as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board. No contention that has not been urged before the board shall be considered by the court unless the failure or neglect to urge such contention shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If any party shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to produce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file with the court its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review in the same manner as are other judgments or decrees of the court. [L. '39, Ch. 72, § 11. Approved and in effect February 28, 1939.]

3649.29. Cooperation between districts. The supervisors of any two or more districts organized under the provisions of this act may cooperate with one another in the exercise of any or all powers conferred in this act. [L. '39, Ch. 72, § 12. Approved and in effect February 28, 1939.]

3649.30. State agencies to cooperate. Agencies of this state which shall have jurisdiction over, or be charged with the administration of any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any

county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this act. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land-use regulations adopted pursuant to section 9 [3649.26] of this act shall have the force and effect of law over all such publicly owned lands, and shall be in all respects observed by the agencies administering such lands. [L. '39, Ch. 72, § 13. Approved and in effect February 28, 1939.]

3649.31. Discontinuance of districts — procedure — disposition of property — certificate of dissolution — unexecuted contracts remain in force. At any time after five (5) years after the organization of a district under the provisions of this act, any ten (10) occupiers of land lying within the boundaries of such district may file a petition with the state soil conservation committee, praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty (60) days after such a petition has been received by the committee it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the..... (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the..... (name of the soil conservation district to be here inserted)" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relative thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued opera-

tion of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in section 2 [3649.19] of this act; provided, however, that the committee shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the state soil conservation committee of a certification that the committee has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil conservation committee, setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dis-

solution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation committee shall be substituted for the district or supervisors as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of section 10 [3649.27] of this act, nor the pendency of any action instituted under the provisions of such section, and the committee shall succeed to all rights and obligations of the district or supervisors as to such liens and actions. [L. '39, Ch. 72, § 14. Approved and in effect February 28, 1939.]

3649.32. Disposition of funds. A. Allocation to districts — use thereof. Unless otherwise provided by law, all moneys which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of soil conservation districts organized under the provisions of this act shall be allocated by the state soil conservation committee among the districts already organized, or to be organized, during the ensuing biennial fiscal period, in accordance with the procedure specified in subsection B of this section. All moneys allocated to any district by the said committee shall be available to the supervisors of such district for all administrative and other expenses of the district under this act and for all administrative and other expenses of the board of adjustment established or to be established by said district.

B. Allocation according to acreage — other methods — retention of funds by committee — subsequent allocations. Seventy-five (75) per centum of all moneys which may be appropriated to pay the administrative and other expenses of soil conservation districts shall be allocated by the state soil conservation committee among all the districts organized, or to be organized, within the ensuing biennial fiscal period, under this act, in direct proportion to the total acreage of land within each

district. The remaining twenty-five (25) per centum of said moneys shall be allocated by the state committee among the districts on such basis of allocation as shall be fair, reasonable, and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special difficulty of carrying on operations, special volume of work to be done, and the special importance of instituting erosion control operations immediately. In making allocations of such moneys, the committee shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with the provisions of this section from time to time among districts which may be organized after the initial allocations are made, but within the ensuing biennial fiscal period.

C. Requests for appropriations by committee — application of budget act — information to be given in request. The state soil conservation committee shall submit to the state board of examiners, on or before the first day of November of each year preceding a regular session of the legislative assembly a request for an appropriation as provided in the budget act. The request for an appropriation shall state, in addition to the requirements of the budget act, the following:

The number and acreage of districts in existence or in process of organization, together with an estimate of the number and probable acreage of the districts which may be organized during the ensuing biennial fiscal period; a statement of the balance of funds, if any, available to the committee and to the districts; and the estimates of the committee as to the sums needed for its administrative and other expenses and for allocation among the several districts during the ensuing biennial fiscal period. [L. '39, Ch. 72, § 15. Approved and in effect February 28, 1939.]

3649.33. Partial invalidity saving clause. If any provisions of this act, or the application of any provision to any person or circumstances, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby. [L. '39, Ch. 72, § 16. Approved and in effect February 28, 1939.]

3649.34. Inconsistency with other acts. Insofar as any of the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. [L. '39, Ch. 72, § 17. Approved and in effect February 28, 1939.]

3649.35. Repeal. Chapter 157 of the laws of the regular session of the twenty-fifth legislative assembly is hereby repealed. [L. '39, Ch. 72, § 18. Approved and in effect February 28, 1939.]

CHAPTER 307

FISH AND GAME LAWS—COMMISSION AND WARDEN

Section

3676. Creating fish and game preserves, refuges, sanctuaries, rest grounds, closed districts and closed seasons.

3653. Powers and duties of commission.

1938. Under the authority conferred by this section on the fish and game commission to fix seasons, or shorten or close seasons, and the provision that existing statutes shall continue in full force and effect except as altered or modified by the commission, such commission had the power to shorten closed seasons, which would result in lengthening open seasons, as fixed by statute, the intent of the legislature being to put the entire matter in the hands of the commission. State ex rel. State Fish and Game Commission v. District Court, 107 Mont. 289, 84 P. (2d) 798.

3676. Creating fish and game preserves, refuges, sanctuaries, rest grounds, closed districts and closed seasons. Preserves, refuges, sanctuaries, rest grounds, or closed districts made or created by said commission, and any land or water areas or portions thereof, closed by said commission, shall be conspicuously posted for a period of twenty (20) days, with posters setting forth their purposes and the penalties for violating the orders, rules and regulations of the state fish and game commission applicable to them. Not less than twenty (20) days before any fish and game district, closed district, preserve, refuge, sanctuary, rest ground, so created by said commission, or closure of land or water areas becomes effective, publication shall be made as provided in section 3677 hereof of the boundaries of such fish and game district, closed district, preserve, refuge, sanctuary or rest ground, so created by said commission, such boundaries to be accurately designated by definite topographic monuments or public land survey. The hunting, pursuing, capturing, killing or taking of any fish or game animals or game birds or fur-bearing animals in violation of the rules, regulations or orders of the state fish and game commission governing any closed season, fish and game district, refuge, sanctuary, preserve, rest ground or closed land or water area, promulgated by said commission shall be punishable with the same penalties as provided for the violation of the state fish and game laws of this state, regarding closed sea-

sons. All game preserves or refuges heretofore created are continued in full force and effect until such time as the same are changed by the commission in the manner herein designated; provided, that said commission shall have the right, power and authority when properly petitioned to alter, and change the boundaries of, or entirely do away with and abandon any preserve or refuge, excepting the Sun River game preserve, when in the opinion of said commission, it is to the best interest so to do. [L. '37, Ch. 145, § 1, amending R. C. M. 1935, § 3676. Approved and in effect March 16, 1937.]

Section 2 repeals conflicting laws.

CHAPTER 308

FISH AND GAME LAWS — LICENSES — PROTECTION AND PROPAGATION OF FISH AND GAME

Section

3685. Fees and powers under licenses—tagging of carcasses and reports of killing of elk or deer—transfer of money from fish and game fund to bounty fund—who are resident citizens — various classes of licenses and fees.
- 3685.3 License fee — rights under license—term — class BB license and fee.
3742. Unlawful to transport, possess or dispose of animals or parts of animals except under permit—exceptions—penalty.
- 3776.7. Little Saint Joe game preserve—territory included.
- 3778.9. Big game hunting—costume of hunter.
- 3778.10. Violation of act—penalty.

3685. Fees and powers under licenses — tagging of carcasses and reports of killing of elk or deer — transfer of money from fish and game fund to bounty fund — who are resident citizens — various classes of licenses and fees. Said applicant, if a resident of the state of Montana and a citizen of the United States, shall pay to the officer or person countersigning and issuing the license the sum of two dollars (\$2.00) as a license fee, and shall obtain a license of class A, which shall entitle the holder to pursue, hunt, shoot, kill, capture, take and possess game birds and to fish with hook and line or rod in hand as authorized by this act.

Said applicant, if a resident of the state of Montana and a citizen of the United States, shall pay to the officer or person countersigning and issuing the license the sum of one dollar (\$1.00), and shall obtain a license of class AA, which shall entitle the holder to pursue, hunt, shoot, kill, capture, take and possess any of the game animals of this state as authorized by this act; provided, however, that said applicant, in order to obtain said

class AA license, must be the owner and possessor of a class A license, as hereinabove defined.

Said applicant, if a resident "sportsman" of the state of Montana and a citizen of the United States, may pay to the officer or person countersigning and issuing the license the sum of five dollars (\$5.00) as a license fee, and shall obtain a license of class AAA, herein designated as a resident "sportsman's" license, which shall entitle the holder to pursue, hunt, kill, capture, take and possess game, game birds and game animals, and to fish with hook and line or rod in hand as authorized by this act.

All citizens of the United States who have lived in this state at least six months immediately preceding their application for a license, or officers, soldiers, sailors and marines of the United States army, navy, or marine corps, shall be deemed resident citizens for the purpose of this section, as well as officers of the forest service and of the biological survey of the United States department of agriculture.

Said applicant, if a non-resident of the state or a resident for less than six months immediately preceding his application for a license and a citizen of the United States, shall pay to the officer countersigning and issuing the license the sum of five dollars (\$5.00) as a license fee, and shall obtain a class B license, which shall entitle the holder to fish with hook and line, or rod in hand, as authorized by this act; and such non-resident, on like application and on the payment of the sum of ten dollars (\$10.00) as a license fee, shall obtain a class B-1 license, which shall entitle him to pursue, hunt, shoot, kill and take game birds, as authorized by this act; and such non-resident on like application and on the payment of the sum of thirty dollars (\$30.00), as a license fee, shall obtain a license of class B-2, which shall entitle the holder to pursue, hunt, shoot, kill, capture, take and possess game animals, as authorized by this act.

Said applicant, if an alien, resident or non-resident, shall pay to the officer countersigning and issuing the license, the sum of ten dollars (\$10.00) as a license fee, and shall obtain a class C license, which shall entitle him to fish with hook and line or rod in hand, as authorized by this act; and such alien, on like application and on the payment of the sum of thirty dollars (\$30.00) as a license fee, shall obtain a license of class C-1, which shall entitle him to pursue, hunt, shoot, kill and take game birds, as authorized by this act; and such alien, on like application and on the payment of the sum of fifty dollars (\$50.00) as a license fee, shall obtain a license of class C-2, which shall entitle him to pursue, hunt, shoot,

kill, capture, take and possess game animals, as authorized by this act, provided, however, that any person in possession of first citizenship papers shall not be considered a resident of the state of Montana for the purpose of this act..

To every license, whether issued to a resident, non-resident or alien, which authorizes the licensee to kill elk or deer in this state, there shall be attached to said license certain tags, coupons or other markers, the form of which shall be prescribed by the state fish and game commission, and when any person shall take or kill any deer or elk under such license such person shall immediately thereafter detach from his license, and attach in plain sight to the carcass of said animal or animals the proper tag, coupon or other marker, which said tag, coupon or other marker shall be kept attached thereto so long as any considerable portion of the carcass remains unconsumed. When the proper tag, coupon or other marker is so attached to the said game so killed, the same may be possessed, used, stored and transported; provided the necessary permit to transport the same accompanies the shipment. To said license to hunt or take elk or deer shall also be attached a card, which said card shall on or before the first day of January of the year following the date of the issuance of said license, be returned by the holder of said license to the fish and game commission and a report made to said commission of the game taken under said license and the place where the same was taken, it being the intent of this act to require every licensee to make said report whether any game was taken under said license or not. It shall be unlawful and a misdemeanor punishable, accordingly, for anyone killing any deer or elk under said license, to fail or neglect to attach the tag, coupon or other marker so provided by said license to any deer or elk killed by them immediately after the same had been killed or to fail to keep said tag, coupon or other marker attached to said deer or elk or portions thereof while the same is possessed by him.

The applicant for a class D license, or trapper's license, must be the owner and in possession of a class A-2 license, and upon the payment of the sum of ten dollars (\$10.00) to the officer to whom the application for a class D license is made, shall receive and obtain a class D license, or trapper's license, which shall authorize the holder thereof to trap fur-bearing animals within the state at such times and in such manner as may be lawful so to do under the laws of this state and the regula-

tions of the fish and game commission, and at such places as may be designated in said license.

All sums collected for licenses sold, or received for permits issued, from the sale of seized game, or from fines, or the sale of firearms or other chattels confiscated, from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the state fish and game commission from any and all other sources are hereby appropriated to and placed under control of the state fish and game commission. All moneys so received shall be remitted by the state fish and game warden to the state treasurer to be by him placed to the credit of the fish and game fund. [L. '39, Ch. 174, § 1, amending R. C. M. 1935, § 3685. Approved and in effect March 17, 1939.

Section 4 repeals conflicting laws.

3685.3. License fee—rights under license—term—class BB license and fee. An applicant for such temporary, non-resident license, if a citizen of the United States and a non-resident of the state of Montana, shall pay to the officer or person countersigning and issuing such license the sum of two dollars and fifty cents (\$2.50) as a license fee and shall obtain a license of class BB, which shall entitle the holder to fish with hook and line or rod in hand, as authorized and limited by law, for a period of ten (10) days from and after the date of issuance of such license. [L. '39, Ch. 174, § 1, amending R. C. M. 1935, § 3685.3. Approved and in effect March 17, 1939.

Section 4 repeals conflicting laws.

3696. Open season for elk—waste of meat unlawful.

✓1938. The fish and game commission had the power to lengthen the open season on elk under the power conferred on the commission by section 3653, as amended by the laws of 1935. State ex rel. State Fish and Game Commission v. District Court, 107 Mont. 289, 84 P. (2d) 798.

3696.1. Open season for elk in Teton county—authority of game warden to shorten.

✓1938. Cited in State ex rel. State Fish and Game Commission v. District Court, 107 Mont. 289, 84 P. (2d) 798, holding that under section 3653, as amended in 1935, the commission had power to lengthen the open season on elk.

3696.4. Open season for elk in Park county—authority of fish and game commission to shorten.

1938. Cited in State ex rel. State Fish and Game Commission v. District Court, 107 Mont. 289, 84 P. (2d) 798, holding that under section 3653, as amended in 1935, the commission had power to lengthen the open season on elk.

3742. Unlawful to transport, possess or dispose of animals or parts of animals except under permit—exceptions—penalty. It is hereby made unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport within or out of the state any game fish, wild bird, game or fur-bearing animal or part thereof, protected by the laws of this state, or coming from without the state whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by this act. The provisions of this section shall not apply to the plumage of wild waterfowl lawfully killed when purchased or sold for other than millinery purposes, or to birds or animals collected or possessed under a permit issued by the proper state fish and game warden for scientific or propagating purposes, nor shall the provisions of this section be construed to prohibit the purchase, sale or offering for sale, shipping, transporting, or possession for sale, any head, skin, or scalp, mounted or unmounted, or any full-sized mount of any game animal lawfully killed, provided the seller, before selling any such specimen shall first obtain from the state fish and game warden a permit authorizing him to sell it, nor to the sale of fur-bearing animals, or the skins of fur-bearing animals, except untagged beaver skins, nor to the export of fur-bearing animals or the skins of fur-bearing animals under proper permit of the state fish and game warden, provided, however, that the hides of elk and deer are specially excluded from the provisions of this section. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished as hereinafter provided. [L. '39, Ch. 115, § 1, amending R. C. M. 1935, § 3742. Approved and in effect March 3, 1939.]

Section 2 repeals conflicting laws.

3776.7. Little Saint Joe game preserve—territory included. For the better protection and propagation of game animals and birds, the following described area in Mineral county, state of Montana, is hereby set aside and established as a state game preserve, to be known as the Little Saint Joe game preserve. Beginning at a point on the south bank of the Missoula river where Dry creek flows into said river; running thence westerly along the south bank of Dry creek to the northwest quarter (NW $\frac{1}{4}$) of section twenty-seven (27) in township seventeen (17) north, range twenty-seven (27) west of the Montana principal meridian to the watershed between Murphy creek and the dry fork of Dry creek; running thence in a southerly direction along this divide to Blacktail mountain in the northeast quarter (NE $\frac{1}{4}$) of section four (4) in township sixteen (16) north, range twenty-seven (27) west of the Montana principal meridian; running thence in a southwesterly direction along the watershed between Thompson-Oregon creeks and Dry creek to the Montana-Idaho state line; thence westerly along said state line to a point where the Deer creek government trail intersects said state line between Montana and Idaho; thence northerly along the east side of said Deer creek trail to a point where said trail intersects the south bank of the St. Regis river; thence down the south bank of the St. Regis river to its confluence with the Missoula river; thence up the south bank of the Missoula river to the point of beginning, except that the hereinafter described land now within the limits of said Little Saint Joe game preserve as above set forth by metes and bounds shall be excluded therefrom; to-wit: All privately owned land purchased prior to this act, under fence in sections thirteen (13), fourteen (14), fifteen (15), twenty-two (22), twenty-three (23) and twenty-four (24) in township seventeen (17) north, range twenty-seven (27) west of the Montana principal meridian. [L. '39, Ch. 147, § 1, amending R. C. M. 1935, § 3376.7. Approved and in effect March 11, 1939.]

3778.9. Big game hunting—costume of hunter. It shall be unlawful for any person to hunt any of the big game animals in this state under any of the provisions of the laws of this state without such person wearing a cap or hat, shirt jacket, coat or sweater of a

bright red color. [L. '37, Ch. 74, § 1. Approved and in effect March 3, 1937.

Section 3 repeals conflicting laws.

3778.10. Violation of act—penalty. Any person convicted of a violation of any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than two dollars and fifty cents (\$2.50) or more than five dollars (\$5.00). [L. '37, Ch. 74, § 2. Approved and in effect March 3, 1937.

Section 3 repeals conflicting laws.

CHAPTER 309

REGULATION OF RAILROADS—BOARD OF RAILROAD COMMISSIONERS

3809. Action to determine reasonableness of rates or classification.

1936. ✓ Action to enjoin the Board of Railroad Commissioners of the State of Montana from enforcing its order to continue the operation of trains of plaintiff at a loss. Held that under the Montana statute the review of the order of the commission is judicial in character and that federal courts may have jurisdiction to review the same. *Great Northern Ry. Co. v. Nagle*, Atty. Gen. et al., 16 Fed. Supp. 532.

1935. ✓ State statute which denies the right of injunctive relief during the pendency of a suit for rate revision by order of Utility Commission held violative of provisions of the United States constitution but held that the federal court did not have jurisdiction to enjoin the rate order of the State Public Service Commission. *Montana Power Co. v. Public Service Commission*, 12 Fed. Supp. 946.

3842. Railroad commission may order electric signal bells installed.

1938. One of the highest obligations of railroad operators is to protect the public at highway crossings, but watchmen and warning devices are required by law and installed for the primary purpose of warning the traveling public of approaching trains or cars, but the absence of such warning devices does not excuse the negligence of the highway traveler who is charged with reasonable care in the premises. *Inkret v. Chicago, M., St. P. & P. R. Co.*, Mont., 86 P. (2d) 12.

1935. ✓ This section is not applicable where the crossing is partly within and partly without a city. *Jarvella v. Northern Pac. Ry. Co.*, 101 Mont. 102, 53 P. (2d) 446.

CHAPTER 310

MOTOR CARRIERS—SUPERVISION AND REGULATION

3847.1. Definition of terms.

1936. ✓ The public highways belong to the people for use in the ordinary way. Their use for the purpose of gain is special and extraordinary, and generally

may be regulated by the state. For the protection of the state highways there is no reason why private carriers, equally with the public ones, should not be required to obtain certificates. Regulation by means of such certificates is reasonably devised to protect the public from abusive use of the roads, and from the evils incident to unregulated competition. *Board of Railroad Commissioners v. Reed*, 102 Mont. 382, 58 P. (2d) 271.

3847.8. Certificate required of class A motor carriers—contents of application—fee.

1935. ✓ Railroad received permission from state commissioners to abandon a line. A bus company received permission to institute bus line along the route. Before the orders of commission were complied with the commission personnel changed and a rehearing was granted which reversed the former orders of the commission. Held, that the commission was within its power to order rehearing if it did not abuse its discretion. *Northern Pac. Ry. Co. v. Board of Railroad Com'rs.*, 13 Fed. Supp. 529.

3847.10. Certificate required of class C motor carriers—contents of application—fee.

1935. Railroad received permission from state commissioners to abandon a line. A bus company received permission to institute bus line along the route. Before the orders of commission were complied with the commission personnel changed and a rehearing was granted which reversed the former orders of the commission. Held, that the commission was within its power to order rehearing if it did not abuse its discretion. *Northern Pac. Ry. Co. v. Board of Railroad Com'rs.*, 13 Fed. Supp. 529.

3847.11. Hearing to consider applications—notice—matters considered—manner of conducting hearings.

1935. Railroad received permission from state commissioners to abandon a line. A bus company received permission to institute bus line along the route. Before the orders of commission were complied with the commission personnel changed and a rehearing was granted which reversed the former orders of the commission. Held, that the commission was within its power to order rehearing if it did not abuse its discretion. *Northern Pac. Ry. Co. v. Board of Railroad Com'rs.*, 13 Fed. Supp. 529.

3847.12. Authorization of board required for transfer of privilege—partial or conditional granting of privilege—duration of certificate.

1935. Railroad received permission from state commissioners to abandon a line. A bus company received permission to institute bus line along the route. Before the orders of commission were complied with the commission personnel changed and a rehearing was granted which reversed the former orders of the commission. Held, that the commission was within its power to order rehearing if it did not abuse its discretion. *Northern Pac. Ry. Co. v. Board of Railroad Com'rs.*, 13 Fed. Supp. 529.

3847.13. Compliance with rules and regulations of board required of certificate holder.

1935. Railroad received permission from state commissioners to abandon a line. A bus company received permission to institute bus line along the

route. Before the orders of commission were complied with the commission personnel changed and a rehearing was granted which reversed the former orders of the commission. Held, that the commission was within its power to order rehearing if it did not abuse its discretion. *Northern Pac. Ry. Co. v. Board of Railroad Com'rs.*, 13 Fed. Supp. 529.

CHAPTER 313

REGULATION OF PUBLIC UTILITIES — PUBLIC SERVICE COMMISSION

Section

3906. Action to set aside rates or charges fixed by commission — answer by commission — precedence in trial — evidence — injunction — effect — order of commission — when effective — undertaking — conditions — procedure in district court — new evidence — judgment — appeal to supreme court — burden of proof.

3881. "Public utility" defined.

1938. ✓ On the question of whether appropriators of water were subject to the jurisdiction of the public service commission as a public utility the property may be shown to have been devoted by them to a public use without regard to statutory provisions. *Sherlock v. Greaves*, 106 Mont. 206, 76 P. (2d) 87.

3882. Power to prescribe rules of procedure — judicial power.

1938. ✓ The public service commission was properly prohibited by writ of prohibition from exercising judicial powers in a matter involving the adjudication of water priorities between a power company and landowners in connection with the irrigation of farm lands. *State ex rel. Public Service Commission v. District Court*, 107 Mont. 240, 84 P. (2d) 335.

3905. Enforcement of rates or charges.

1935. ✓ State statute which denies the right of injunctive relief during the pendency of a suit for rate revision by order of Utility Commission held violative of provisions of the United States constitution but held that the federal court did not have jurisdiction to enjoin the rate order of the State Public Service Commission. *Montana Power Co. v. Public Service Commission*, 12 Fed. Supp. 946.

3906. Action to set aside rates or charges fixed by commission — answer by commission — precedence in trial — evidence — injunction — effect — order of commission — when effective — undertaking — conditions — procedure in district court — new evidence — judgment — appeal to supreme court — burden of proof. Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within ninety days commence an action in the district court of the proper county against the commission and other interested parties as defendants, to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in

such order is unlawful or unreasonable, or that any such regulation, practice, or service, fixed in such order, is unlawful or unreasonable. The commission and other parties defendant shall file their answer to said complaint within thirty days after the service thereof, whereupon such action shall be at issue and stand ready for trial upon twenty days' notice to either party.

All actions brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions; any party to such action may introduce evidence in addition to the transcript of the evidence offered to such commission. Any party in interest being dissatisfied with the order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing or prescribing any rule, regulation, practice, or service, may apply to the district court having jurisdiction, for, and upon proper showing there shall be issued by such court, an injunction, staying and suspending the operation of the order of the commission pending the final determination of the reasonableness and lawfulness of said order in the courts. All orders of the commission shall become operative within twenty days after the filing of the order by the commission subject to the right of stay and injunction as hereinbefore provided. As a condition to the granting of such injunction, the court shall require of the party seeking such injunction an undertaking entered into on the part of the plaintiff, supported by responsible corporate surety, in such reasonable sum as the court shall direct, to the effect that the plaintiff will pay all damages which the opposite party may sustain by reason of the delay or prevention of the order of the commission becoming effective if said order is sustained in the final determination or in proceedings involving rates the court may in the alternative require the difference between the existing rate and the commission ordered rate to be impounded under the direction of the court, pending the final determination of the action.

If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen days from the date of such transmission.

Upon receipt of such evidence, the commission shall consider the same, and may modify, amend, or rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulation, practice, or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

Either party to said action, within sixty days after service of a copy of the order or judgment of the court, may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the supreme court of Montana, the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

In all actions under this act, the burden of proof shall be upon the party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, as the case may be. [L. '37, Ch. 56, § 1, amending R. C. M. 1935, § 3906. Approved and in effect February 25, 1937.]

1936. Public service commission issued order requiring Public Service Company to reduce its rates. The company brought suit in federal court on the ground that the rate was confiscatory. Held that the state statute providing for redress in the state court had not been tested and until it was the federal courts had no jurisdiction unless suit in state court proved there was no plain speedy and adequate remedy at law under the Johnson Act. *Mountain States Power Co. v. Public Service Commission of Montana et al.*, 57 S. Ct. Rep. 168.

1935. State statute which denies the right of injunctive relief during the pendency of a suit for rate revision by order of Utility Commission held violative of provisions of the United States constitution but held that the federal court did not have jurisdiction to enjoin the rate order of the State Public Service Commission. *Montana Power Co. v. Public Service Commission*, 12 Fed. Supp. 946.

3911. Mandamus, injunction, and other remedies.

1935. State statute which denies the right of injunctive relief during the pendency of a suit for rate revision by order of Utility Commission held violative of provisions of the United States constitution but held that the federal court did not have jurisdiction

to enjoin the rate order of the State Public Service Commission. *Montana Power Co. v. Public Service Commission*, 12 Fed. Supp. 946.

CHAPTER 314

PETROLEUM PRODUCTS—SUPERVISION AND REGULATION OF MANUFACTURE AND DISTRIBUTION

Section

3913.1-3913.24. Repeals.

3913.1-3913.24. Repeals. [L. '39, Ch. 146, § 31 [4264.2], states that nothing in that act shall be construed as repealing any of this chapter.]

CHAPTER 316

REGULATION OF STOCK BROKERS AND INVESTMENT COMPANIES (BLUE SKY LAWS)

Section

4028. Securities to which provisions of act not applicable.

4026. Investment company defined.

1937. Because of the presumption that the law has been obeyed, in the absence of a showing that the blue sky law was not complied with in the transfer of land to a common-law trust in consideration of the grantor receiving a certificate of interest in the trust, the transaction was held valid in *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

4028. Securities to which provisions of act not applicable. The provisions of this act shall not apply to the following securities.

1. Securities of the United States or of any foreign government, with which the United States maintains diplomatic relationship at the time of the sale thereof, or of any state or territory, or of any county, city, township, district or other public taxing subdivision of any state or territory of the United States.

2. Securities of public or quasi-public corporations, the issues of which are regulated by a state officer or board of this state, or by a state officer or board of similar authority, of any state or territory of the United States, or securities senior thereto.

3. Securities of state or national banks or trust companies or building and loan associations authorized by the superintendent of banks to do business in this state.

4. Policy contracts of insurance companies licensed to do business in this state.

5. Securities of any domestic corporation not organized for profit.

6. Securities of any co-operative association organized in good faith under the laws of this state, exclusively for the purpose of conducting upon the co-operative plan, among its stock-holders, any or all of the following business: Any agricultural, dairy, livestock or produce business, the business of selling [,] marketing or otherwise handling any agricultural, dairy or livestock products, or other produce raised or produced by the stockholders of such association, or by any co-operative association, the manufacture of any products from any agricultural, dairy or livestock products, or other produce, produced by the members of such association, any business incidental to any of the above purposes; or the securities of any cooperative association organized in good faith under the laws of this state, for the purpose of conducting the business of operating a rural telephone system or systems or the business of operating a rural electrification system or systems for the transmission or distribution of electric energy on a cooperative basis, or the sale and distribution of electrical and plumbing appliances under the provisions of the federal rural electrification act.

7. Securities listed on the New York stock exchange, the Boston stock exchange, the board of trade of the city of Chicago, Chicago stock exchange or the New York curb exchange, which securities have been so listed pursuant to official authorization by such exchange, and all securities senior to any securities so listed or represented by subscription rights which have been so listed or evidence of indebtedness guaranteed by companies, any stock of which is so listed, such securities to be exempt only so long as such listing shall remain in effect.

8. Notes secured by mortgages for real estate located in the state of Montana.

9. Securities sold by the owner for the owner's account exclusively where the owner is not the issuer or an underwriter thereof, when not made in the course of continued and repeated transactions of a similar nature.

10. Securities of a corporation where the persons holding the same shall not exceed fifty in number. [L. '37, Ch. 120, § 1, amending R. C. M. 1935, § 4028. Approved and in effect March 15, 1937.

Section 2 repeals conflicting laws.

Section 3 is partial invalidity saving clause.

CHAPTER 318

REGULATION OF WAREHOUSEMEN (UNIFORM WAREHOUSE RECEIPT ACT)

4095. Procedure on suit when goods are claimed by more than one person.

1938. ✓ Interpleader by warehouseman held brought under this section, and not under section 9087, where he claimed affirmative relief in the way storage charges and cancellation of erroneously issued storage tickets. *Rocky Mountain Elevator Co. v. Bammel*, 106 Mont. 407, 81 P. (2d) 673.

1938. ✓ Under this section a warehouseman may interplead claimants to property stored even though he seeks affirmative relief in the way of storage charges and cancellation of storage tickets erroneously issued. *Rocky Mountain Elevator Co. v. Bammel*, 106 Mont. 407, 81 P. (2d) 673.

1938. ✓ An elevator company interpleaded all parties owning or claiming grain stored in its elevator, and it was held that under this section, the court had power to settle all issues between the parties, including the cancellation of erroneously issued storage tickets. *Rocky Mountain Elevator Co. v. Bammel et al.*, 106 Mont. 407, 81 P. (2d) 673.

4096. When warehouseman may retain goods in case of adverse claim.

1938. Cited in *Rocky Mountain Elevator Co. v. Bammel*, 106 Mont. 407, 81 P. (2d) 673.

CHAPTER 319

REGULATION OF TITLE ABSTRACTORS

Section

4139.12 No abstract books or indices required under certain conditions—holder of valid certificate—person engaged in preparation of abstract book or indices—temporary permit—renewal.

4139.12. No abstract books or indices required under certain conditions—holder of valid certificate—person engaged in preparation of abstract book or indices—temporary permit—renewal. Any person, firm or corporation not having the abstract books or indices as required by section 4139.1, and who, upon the first day of March, 1931, is the holder of a valid and subsisting certificate of authority issued by the state treasurer of the state of Montana, pursuant to section 4140, of the revised codes of 1921, and who shall make application to said board prior to the expiration of such certificate of authority and who shall comply with the other requirements hereof, providing for a registered abstracter, bond and other provisions, shall, upon the payment of five dollars as is herein provided, be issued a certificate of authority under the provisions of this act. Any person, firm or corporation, desiring to engage in the business of making and compiling abstract of title to real property in any county in this state and

who is not at the time of making application to said board for a certificate of authority provided with a completed set of abstract books or indices to the records in the county clerk and recorder's office of such county as required by section 4139.1, and who can comply with the other requirements hereof providing for a registered abstractor, bond and other provisions, shall, upon submitting satisfactory proof to said board that he has been and on the first day of January, 1939, was the holder of a temporary certificate, issued by said board, and is engaged in good faith in the preparation of such abstract books or indices and that he intends in good faith to complete the same, and upon payment of five dollars shall be issued a temporary certificate of authority good for a period of one year, and upon good cause being shown to said board, such certificate shall be renewed from year to year until and including the year 1943, upon payment of five dollars for each annual certificate. [L. '39, Ch. 82, § 1, amending R. C. M. 1935, § 4139.12. Approved March 1, 1939.]

CHAPTER 327

REGULATION OF COMMERCIAL FERTILIZER

Section

- 4208.2. Statement required on mixed fertilizer container.
- (a) Weight.
 - (b) Name.
 - (c) Manufacturer.
 - (d) Nitrogen.
 - (e) Potash.
 - (f) Phosphoric acid.
- 4208.6. Analysis of fertilizer—details of tests—who to test.
- 4208.7. Samples—how procured.
- 4208.9. Analyses report—expenses—how paid.
- 4208.10. Reports of analyses to commissioner of agriculture — publication — license fees surplus—disposition.

4208.2. Statement required on mixed fertilizer container. Each lot or parcel of mixed commercial fertilizer sold, offered or exposed for sale, or distributed within this state shall have on each package or container, in a conspicuous place on the outside, a legible or plainly printed statement in the English language, clearly and truly certifying:

(a) **Weight.** The net weight of the contents of the package, lot or parcel.

(b) **Name.** The name, brand, or trade mark.

(c) **Manufacturer.** The name and principal address of the manufacturer or person responsible for placing the commodity on the market.

(d) **Nitrogen.** The minimum percentage and source of nitrogen in available form.

(e) **Potash.** The minimum percentage and source of potash K_2O , soluble in distilled water.

(f) **Phosphoric acid.** The minimum percentage and source of available phosphoric acid P_2O_5 and also the minimum total phosphoric acid content.

No other statement of chemical compounds, except as above, shall be placed on any such container.

All statements regarding chemical contents on labels must be in print or type of uniform size. [L. '39, Ch. 183, § 1, amending R. C. M. 1935, § 4208.2. Approved and in effect March 17, 1939.]

Section 6 repeals conflicting laws.

4208.6. Analysis of fertilizer—details of tests—who to test. The chemist of the Montana agricultural experiment station, shall, at least once each year, obtain at least one sample of each brand of commercial fertilizer offered for sale in this state to make proper analyses and tests to determine (1) the net weight of the contents of each package examined; (2) the percentage of nitrogen in available form; (3) the percentage of potash K_2O , soluble in distilled water, and (4) the percentage of available and total phosphoric acid P_2O_5 , and to inspect labels on each parcel or container, and determine whether or not they conform to the provisions of this act. [L. '39, Ch. 183, § 2, amending R. C. M. 1935, § 4208.6. Approved and in effect March 17, 1939.]

Section 6 repeals conflicting laws.

4208.7. Samples—how procured. All samples taken under the provisions of section 4208.6 must be composites of equal portions taken from at least five (5) original packages in such manner as to be truly representative of the contents of the package. Such samples shall be thoroughly mixed and immediately placed in containers which exclude air. Analyses of such samples shall be made in accordance with the methods of the association of official agricultural chemists. [L. '39, Ch. 183, § 3, amending R. C. M. 1935, § 4208.7. Approved and in effect March 17, 1939.]

Section 6 repeals conflicting laws.

4208.9. Analyses report—expenses—how paid. All such analyses of commercial fertilizer, as required by this act, shall be reported to the commissioner of agriculture of the state of Montana. All expenses for such analyses, together with supplies of all kinds needed for making the same, and also

the traveling and other expenses incurred in collecting samples, as required herein, together with all administrative expenses including the expense of publishing reports, shall be provided and paid out of the fund arising from the license fees provided for in section 4208.5, upon verified claims filed with and audited by the commissioner of agriculture and by him presented for allowance by the state board of examiners, in the same manner as all claims contracted for and in behalf of the state of Montana. It shall be the duty of the commissioner of agriculture to enforce this act and for that purpose, he shall make all proper and necessary rules and regulations. [L. '39, Ch. 183, § 4, amending R. C. M. 1935, § 4208.9. Approved and in effect March 17, 1939.]

Section 6 repeals conflicting laws.

4208.10. Reports of analyses to commissioner of agriculture — publication — license fees surplus — disposition. The chemist of the Montana agricultural experiment station shall annually, not later than October fifteenth, make a report to the commissioner of agriculture containing a correct statement of all analyses made. The commissioner of agriculture shall, when funds are available, publish such report separately or in conjunction with any regular report of the department of agriculture. Any surplus of license fees remaining on the first day of January following the close of each fiscal year shall then be placed to the credit of the Montana agricultural experiment station. [L. '39, Ch. 183, § 5, amending R. C. M. 1935, § 4208.10. Approved and in effect March 17, 1939.]

Section 6 repeals conflicting laws.

CHAPTER 330

STANDARD WEIGHTS AND MEASURES — STATE SEALERS OF WEIGHTS AND MEASURES

Section	
4230.	Repealed.
4233.	Repealed.
4235.	State sealer of weights and measures — deputies.
4236.	State sealer of weights and measures — powers and duties.
4237.	State sealer of weights and measures — authority to perform acts authorized.
4238.	Deputies of state sealer — duties — certificate of inspection.
4239.	Repealed.
4240.	Use of weights and measures before testing — penalty.
4241.	Weights and measures — adjusting and sealing — frequency required of dealers.
4242.	State sealers and deputies — duty — visitation and sealing — weight ticket of commodity — exhibition on demand.

Section	
4243.	Powers of state sealer and deputies — computing devices — testing.
4244.	Packages or amounts of commodities to be weighed or measured — duty of sealer or deputies — police power — violators — prosecution.
4245.	Track scales — power to condemn — wilful short weighing or measuring — penalty.
4246.	Package labels — commodities and articles of merchandise — sale by net weight, measure, or count — parties agreeing otherwise — offenses enumerated — exhibiting articles for testing qualities — refusal — misdemeanor — containers — berry containers — standard weights.
4247.	State sealer — records and reports.
4248.	False sealing — penalty.
4249.	Weights and measures for use in trade — stamped and marked — necessity — apothecaries' weights and measures to be tested and sealed.
4250.	Scales and measures not readily adjustable — notice forbidding use — affixation — removal unlawful.
4251.	Weights and measures that cannot be made to conform — stamping or confiscation — family scales — damages for seizure not allowed.
4252.	Weights and measures — seizure as evidence — return or forfeiture.
4253.	Peddlers' scales and measures — to be taken to office of sealer.
4254.	Milk — to be sold by standard wine measure — short measure — purchaser's complaint to sealer.
4255.	Milk — containers — capacity to be blown in glass or otherwise permanently marked thereon.
4256.	False weights or measures — use — penalty.
4257.	Weight duly stamped — legal throughout state — resealing.
4258.	False selling — violation of law — misdemeanor.
4260.	Obstructing sealer — misdemeanor.
4261.	Rules and regulations for deputies — sealer may make — force and effect.
4263.	Arrest — powers of sealer and deputies.
4264.	Fines collected — disposition.
4264.1.	Violation of act — penalty.
4264.2.	Repeals.

4230. Repealed. [L. '37, Ch. 204, § 8. Approved and in effect March 18, 1937. See § 2649.1n.]

4233. Repealed. [L. '39, Ch. 146, § 31. See § 4264.2. Approved and in effect March 11, 1939.]

4235. State sealer of weights and measures — deputies. The commissioner of agriculture is hereby declared to be and is the ex-officio state sealer of weights and measures. He shall appoint as many deputy sealers of weights and measures as he may deem necessary, subject to existing laws. Each such deputy shall give a bond to the state of Montana in the sum of one thousand dollars (\$1,000.00) conditioned upon the faithful performance of his duties.

[L. '39, Ch. 146, § 1, amending R. C. M. 1935, § 4235. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4236. State sealer of weights and measures — powers and duties. Said state sealer of weights and measures shall have general supervision over the weights and measures of the state. He shall take charge of the standards of weights and measures and shall procure at the expense of the state any weights and measures that may be necessary, and shall cause them to be kept and in no case removed from a fire-proof vault, except for the purpose of certification and repairs. He shall maintain said standards in good order and shall submit them once in ten years (10) to the national bureau of standards for certification. [L. '39, Ch. 146, § 4, amending R. C. M. 1935, § 4236. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4237. State sealer of weights and measures — authority to perform acts authorized. The state sealer of weights and measures shall be authorized to perform any and all acts by this act authorized. [L. '39, Ch. 146, § 5, amending R. C. M. 1935, § 4237. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4238. Deputies of state sealer — duties — certificate of inspection. Said state sealer of weights and measures, or his deputies, shall visit the various counties, cities and towns in the state, and in the performance of his duties, he, or his deputies, shall inspect weights and measures and balances which are used for buying or selling goods, wares, merchandise, or other commodities, and for public weighing, and shall test or calibrate weights and measures, weighing devices or apparatus used as test standards in the state. He, or his deputies, shall, at least once a year, test all scales, weights and measures used in checking the receipts and disbursements of supplies of every state institution, and shall report in writing his findings to the executive officer of the institution concerned. The state sealer of weights and measures shall prepare a certificate of suitable size which shall be issued to the owner or person in charge after inspection, and a proper seal to be attached or affixed to all weights and measures or measuring devices so tested. Said certificates and seals shall bear the signature of the state sealer of weights and measures, or shall be signed by a deputy sealer of weights and measures. Such certificate shall be numbered

in consecutive order, and shall show the date of issuance. It shall be unlawful for any person to deface, mutilate, obscure, conceal, efface, cancel or remove any such certificate, or any seal, stamp or mark provided for by this act, or cause or permit the same to be done with intent to mislead, deceive, or to violate any of the provisions of this act, without the written consent of the state sealer of weights and measures or that of the deputy who inspected the weighing device. [L. '39, Ch. 146, § 6, amending R. C. M. 1935, § 4238. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4239. Repealed. [L. '39, Ch. 146, § 31. See § 4264.2. Approved and in effect March 11, 1939.

4240. Use of weights and measures before testing — penalty. From and after the passage and approval of this act it shall be unlawful for any person or persons, firm, or co-partnership, corporation, or association of persons engaged in the trade of buying or selling, purchasing or disposing of, or dealing in any merchandise or commodities to any person, or persons, in the state of Montana, to sell or purchase by weight or by measure, without first having had the weights and measures, scales or measuring devices used by them, or in their possession, for the purpose of determining the amount or quantity of any article or articles of merchandise, tested and a seal attached thereto by the state sealer of weights and measures, or by his deputies. Such seal shall be attached or placed in a conspicuous place upon such weighing or measuring device. Any person or persons making use of weighing devices subject to this act must report to the sealer of weights and measures or his deputies, in writing, the number and location of said weighing device and must promptly report the installation of any new weighing device. Any person or persons using any weight or measure, or scale or other measuring device after the passage and approval of this act, or annually thereafter, which has not been tested as provided by this act, shall, upon conviction thereof, be deemed guilty of a misdemeanor. [L. '39, Ch. 146, § 7, amending R. C. M. 1935, § 4240. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4241. Weights and measures — adjusting and sealing — frequency required of dealers. Every person or persons, firm, co-partnership or corporation engaged in the trade of buying and selling, or as a public weigher or user of weights and measures shall, at least once each

year, have his weights, measures, balances and scales adjusted and sealed. [L. '39, Ch. 146, § 8, amending R. C. M. 1935, § 4241. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4242. State sealers and deputies — duty — visitation and sealing — weight ticket of commodity — exhibition on demand. At least once each year, the state sealer of weights and measures, or his deputies, shall visit the places of business and enter upon the carts, wagons or vehicles then in use for the business of all persons engaged in the trade of buying and selling, or selling, who have weights, measures, or balances which have not been sealed during the current year, and try, adjust and seal the same. All drivers of vehicles used in transporting any commodity which has been weighed shall, upon demand of the sealer of weights and measures, or his deputies, exhibit for examination the weigh ticket or bill of the commodity weighed or transported, showing the weight thereof. [L. '39, Ch. 146, § 9, amending R. C. M. 1935, § 4242. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4243. Powers of state sealer and deputies — computing devices — testing. The state sealer of weights and measures, or his deputies shall have power to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of any kind, instruments or mechanical devices for measurement, and the tools, appliances, or accessories connected with any and all of such instruments or measurements, used, kept for use, sold, offered for sale, or kept for sale, or employed within the state by a proprietor, agent, lessee or employee in determining the size, quantity, extent, area or measurement of quantities, things, produce, articles for distribution or consumption, offered or submitted by such persons for sale, hire, or award. Provided also, that the state sealer of weights and measures, or his deputies, shall at least once a year and as often as may be deemed necessary, try and prove all computing scales and other devices having a device for indicating or registering the price as well as the weight of the commodity offered for sale. Computing devices, which may be used by any person at any place within this state, shall be tested as to the correctness of both weight and arithmetical values indicated by them. [L. '39, Ch. 146, § 10, amending R. C. M. 1935, § 4243. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4244. Packages or amounts of commodities to be weighed or measured — duty of sealer or deputies — police power — violators — prosecution. The sealer of weights and measures, or his deputies, shall at irregular intervals examine all commodities sold and offered for sale and test them for correct weight, measure or count. And he, or his deputies, shall have the power to and shall, from time to time, weigh or measure packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale, or sold, or in the process of delivery, in order to determine whether the same contain the quantity or amount represented and whether they are being offered for sale or sold in accordance with law and may seize for use as evidence any such amounts of commodities or package or packages which shall be found to contain a less amount than that represented. He, or his deputies, shall, for the purposes above mentioned, and in the general performance of their official duties, enter or go into or upon, with or without formal warrant, any stand, place, building, or premises, or may stop any vendor, peddler, junk dealer, coal wagon, ice wagon, or any dealer whatsoever and require him, if necessary, to proceed to some place specified by the sealer of weights and measures, or his deputies, for the purpose of making the proper tests; and in the exercise of such duties they shall have full police power to enforce any and all reasonable measures for testing such weights and measures, and also in ascertaining whether false or short weights and measures are being given in any sales or transfer of articles or merchandise taking place within the state. Whenever the state sealer of weights and measures, or his deputies, have reason to believe that any person or persons or corporation is violating the provisions of this act, or any act relating to weights and measures, they shall submit the evidence to the properly constituted authority in the county in which such violation occurs, who shall thereupon prosecute the persons alleged to have violated the provisions of this act, or any act relating to weights and measures, or such evidence may be submitted direct to the attorney general of the state, who shall have authority to prosecute such persons in the proper county. [L. '39, Ch. 146, § 11, amending R. C. M. 1935, § 4244. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4245. Track scales — power to condemn — wilful short weighing or measuring — penalty. (a) All track scales used for the purpose of weighing freight in carload lots within the state shall be under the control and direction

and jurisdiction of the state sealer of weights and measures, and subject to inspection by him, or his deputies.

(b) The state sealer of weights and measures, or his deputies, shall have power either on their own motion or on complaint being made, to determine whether any such track scales are defective or inefficient, or whether the time, manner, or method of using same is unreasonable, ineffective, or unjust, and shall have power to condemn any such scale found to be defective or inefficient, and prohibit the use of the same while in that condition, and to render such decision and to make such order, rule, or regulation as may be deemed necessary or advisable.

(c) Any person or persons who shall knowingly and wilfully sell, or direct or permit any person or persons in his or their employ to sell any commodity or article of merchandise and make or give any false or short weight or measure, or any person or persons owning or keeping, or having charge of any scales or stockyards for the purpose of weighing livestock, hay, grain, coal, or other articles, who shall knowingly and wilfully report any false or untrue weight, whereby any other person or persons may be defrauded or injured, shall be deemed guilty of a misdemeanor, and shall be answerable to the party defrauded or injured in double damages. [L. '39, Ch. 146, § 12, amending R. C. M. 1935, § 4245. Approved and in effect March 11, 1939.]

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4246. Package labels — commodities and articles of merchandise — sale by net weight, measure, or count — parties agreeing otherwise — offenses enumerated — exhibiting articles for testing qualities — refusal — misdemeanor — containers — berry containers — standard weights. It shall be unlawful for any person or persons, association, or corporation, to sell or offer for sale in this state any commodity or article of merchandise in a package or container, without having such package or container labeled in plain, intelligible words and figures, with a correct statement of the net weight, measure, or numerical count of its contents, designated, where not otherwise provided, by lettering of at least 1/9 inch in height (8 point type). Provided, that nothing in this section shall prevent the sale of a commodity within the provisions of this act when such sale is made from bulk and the quantity is weighed, measured, or counted for the immediate purpose of such sale; provided, further, that nothing in this section shall apply to commodities or articles of merchandise, except milk and cream, offered for sale or sold in packages or containers at a price of

ten cents (10c) or less per such package or to commodities or articles of merchandise in packages or containers which are sold by the aggregate net weight of the contents thereof.

1. It shall be unlawful for any person to sell or offer for sale in this state any commodity or article of merchandise, except by true net weight, measure, or numerical count, except where the parties otherwise agree. Contracts for work done, or anything to be sold by weight or measure, shall be construed according to the standards hereby adopted as the standards of this state, except where the parties have agreed upon any other calculations of measurement, and all statements and representations of any kind referring to the weight or measure of commodities or articles of merchandise shall be understood in the terms of the standards of weights and measures aforesaid. It shall be unlawful for any person to sell solid substances by liquid measure.

2. It shall be unlawful for any person, in buying or selling any commodity or article of merchandise, to make or give false or short weight or measure, or to sell or offer for sale any commodity or article of merchandise less in weight or measure than he represents, or to use a weight, measure, balance or measuring device that is false and does not conform to the authorized standard for determining the quantity of any commodity or article of merchandise, or to have a weight, measure, balance, or measuring device adjusted for the purpose of giving false or short weight or measure, or to use in buying or selling of any commodity or article of merchandise a computing scale or device indicating the weight and price of such commodity or article of merchandise, upon which scale or device the graduations or indications are falsely or inaccurately placed, either as to weight or price, or to use any computing scale having a horizontal registering bar with a barrel computing device, unless such scale is adjusted to register the correct weight from all angles of vision, and the view on the customer's side shall never be, in any manner, obstructed. The selling and delivering of any commodity or article of merchandise shall be prima facie evidence of the representation on the part of the vendor that the quantity sold and delivered was the quantity bought by the vendee. There shall be taken into consideration the usual and ordinary leakage, evaporation, or waste that there may be from the time a package or container is filled by a vendor until he sells the same. A slight variation from the stated weight, measure or quantity for individual packages not to exceed three per cent is

permissible; provided, that the variation is as often above as below the weight, measure or quantity stated.

Any person, who by himself, or his employee or as a proprietor or manager, shall refuse to exhibit any article, commodity or the container of any commodity, produce or anything being sold or offered for sale at a given weight or quantity, or ordinarily so sold, to the state sealer of weights and measures, or his deputies, for the purpose of allowing the same to be tested and proved as to the quantity contained therein as in this act provided, shall be guilty of a misdemeanor.

The term container used in this act is hereby defined to be ANY receptacle or carton into which a commodity is packed, or any wrappings with which any commodity is wrapped or put up for sale, or to be offered or exposed for sale. No containers, boxes, or baskets wherein food products or other commodities are packed shall have a false bottom, false side walls, false lid or covering, or be otherwise so constructed as to facilitate the perpetration of deception or fraud. The state sealer of weights and measures, or his deputies, may seize any container which facilitates the perpetration of deception or fraud. By order of a court having jurisdiction the containers seized shall be condemned and destroyed or released upon such conditions as the court in its discretion may impose, to insure against their use in violation of this section.

There are hereby established the following standard net weights for all berry containers, or hallocks in which strawberries, red or black raspberries, blackberries, currants, gooseberries, or any other berries are sold or offered for sale in this state:

(a) Pint hallocks or containers shall be 33.6 cubic inches in capacity and the contents thereof shall have a net minimum weight of twelve (12) ounces.

(b) Quart hallocks or containers shall be 67.2 cubic inches in capacity and contents thereof shall have a net minimum weight of twenty-four (24) ounces. The sale of, or having in possession for sale, any strawberries, red or black raspberries, blackberries, currants, gooseberries or any other berries in containers or hallocks not complying with the provisions of this act shall be a misdemeanor punishable, upon conviction, by a fine of not less than ten dollars (\$10.00), nor more than twenty-five dollars (\$25.00). [L. '39, Ch. 146, § 13, amending R. C. M. 1935, § 4246. Approved and in effect March 11, 1939.]

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4247. State sealer—records and reports.

The state sealer of weights and measures shall keep a complete record of all work done under his direction, and shall make a biennial report to the governor not later than the first of January of each year preceding the meeting of the legislative assembly. [L. '39, Ch. 146, § 14, amending R. C. M. 1935, § 4247. Approved and in effect March 11, 1939.]

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4248. False sealing—penalty. Any person authorized to seal weights and measures in accordance with this act who shall, without duly verifying the weights and measures or any weighing device of any person by comparison with the standards of weights and measures, stamp any such weighing device or measure, or attach thereto a seal that said weighing device or measure has been duly tested, is hereby declared, upon conviction thereof, to be guilty of a misdemeanor. [L. '39, Ch. 146, § 15, amending R. C. M. 1935, § 4248. Approved and in effect March 11, 1939.]

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4249. Weights and measures for use in trade—stamped and marked—necessity—apothecaries' weights and measures to be tested and sealed. Every weight for use in trade, except when the small size of the weight renders it impracticable, shall have the denomination of such weight permanently marked on the top side thereof in legible figures or letters; and every measure of capacity for use in trade shall have the denomination and kind thereof permanently marked on the outside of such measure in legible figures or letters. A weight or measure not in conformity with this section shall not be sealed by the state sealer of weights and measures, or his deputies.

(a) Apothecaries and all other persons dealing in drugs, medicine and merchandise, commonly sold by apothecaries' weight or by apothecaries' liquid measure, shall at least once in two years cause such weights and measures so used to be tested and sealed by officers authorized under this act to inspect weights and measures. [L. '39, Ch. 146, § 16, amending R. C. M. 1935, § 4249. Approved and in effect March 11, 1939.]

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4250. Scales and measures not readily adjustable—notice forbidding use—affixation—removal unlawful. If any weights, measures, or balances can be readily adjusted by such means as the sealer of weights and measures, or his deputies, may have at hand,

he or they may adjust and seal them, but if they cannot be readily adjusted he, or they, shall affix to such weights, measures, or balances a notice forbidding their use until he, or they are satisfied they have been so adjusted as to conform with the standard. It shall be unlawful for any person to remove such notice, without the written consent of the officer affixing the same. [L. '39, Ch. 146, § 17, amending R. C. M. 1935, § 4250. Approved and in effect March 11, 1939.]

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4251. Weights and measures that cannot be made to conform—stamping or confiscation—family scales—damages for seizure not allowed. All weights, measures, and balances which cannot be made to conform to the standard weights and measures as herein provided shall be stamped “condemned” or “C. D.” by the state sealer of weights and measures, or his deputies, or the state sealer of weights and measures, or his deputies, may confiscate and seize, without warrant, any incorrect weight, measure, weighing or measuring device or part thereof which does not conform to the state standards or specifications, and which in his or their best judgment cannot be repaired. Scales commonly known as “family scales” or scales marked when sold “not in legal trade” shall not be deemed standard and shall be subject to such seizure. The state sealer of weights and measures, or his deputies, shall not be liable to the owner of the property for damages caused by such seizure. [L. '39, Ch. 146, § 18, amending R. C. M. 1935, § 4251. Approved and in effect March 11, 1939.]

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4252. Weights and measures—seizure as evidence—return or forfeiture. The state sealer of weights and measures, or his deputies, may seize, without warrant, such weights, measures, or balances as may be necessary to be used as evidence in case of violation of any act relative to the sealing of weights and measures. They shall be returned to the owners or forfeited as the court may direct. [L. '39, Ch. 146, § 19, amending R. C. M. 1935, § 4252. Approved and in effect March 11, 1939.]

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4253. Peddlers' scales and measures—to be taken to office of sealer. All itinerant peddlers and hawkers, using scales, balances, weights, or measures, shall take the same to the office of the state sealer of weights and measures, or his deputies, before any use is

made thereof, and have the same sealed and adjusted at least once a year. [L. '39, Ch. 146, § 20, amending R. C. M. 1935, § 4253. Approved and in effect March 11, 1939.]

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4254. Milk—to be sold by standard wine measure—short measure—purchaser's complaint to sealer. All milk, cream, and skimmed milk shall be sold only by standard wine measure, and by or in measures, cans, jars, bottles, or other vessels or receptacles, the standard measure or capacity of which shall be the gallon containing two hundred thirty-one (231) cubic inches, the half gallon containing one-half as much as the gallon, and the quart one-fourth as much as the gallon and the pint one-half as much as the quart. Any purchaser of milk, cream or skimmed milk, having reason to believe that any measure, can, jar, bottle, or other vessel or receptacle, in which milk, cream, or skimmed milk is sold and delivered to him, is not of sufficient size or capacity to contain, by standard wine measure, the amount thereof purchased, may apply to the sealer of weights and measures, or his deputies, who shall test the capacity of the same and issue to such purchaser his certificate stating the capacity thereof; and if such capacity, according to such certificate, shall be less than the amount purchased, such purchaser may make complaint to any court having jurisdiction. [L. '39, Ch. 146, § 21, amending R. C. M. 1935, § 4254. Approved and in effect March 11, 1939.]

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4255. Milk—containers—capacity to be blown in glass or otherwise permanently marked thereon. No person or corporation shall, after the passage of this act, sell or offer for sale within the state of Montana, any milk or cream in bottles or glass jars, unless each of said bottles or glass jars in which said milk or cream is sold or offered for sale shall have blown into it, or otherwise indelibly and permanently indicated thereon in a legible and conspicuous manner, the capacity thereof, and the state sealer of weights and measures, or his deputies, shall have the right, at any time, to examine any such bottle or glass jar, in order to ascertain whether such bottle or jar is of a capacity not less than that which it purports to be; and if any such bottle or jar is of less capacity than that which it purports to be, or of [if] any such bottle or jar shall not have blown into it, or otherwise indelibly and permanently indicated thereon in a legible and conspicuous manner, its capacity as aforesaid, the person or corporation selling or offering for sale milk or cream in any such bottle or

jar, or having in his possession any such bottle or jar, to be used or which has been used for the purpose of containing milk or cream to be sold or offered for sale in said state of Montana shall be deemed guilty of a misdemeanor. [L. '39, Ch. 146, § 22, amending R. C. M. 1935, § 4255. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4256. False weights or measures — use — penalty. A person who uses, or has in his possession for use in trade, any weight, measure, scale, balance, steel-yard, or weighing device, which is false or incorrect, shall be guilty of a misdemeanor, and any contract made by any person based upon such false or incorrect devices shall be void and such devices shall be liable to be forfeited by any court having jurisdiction. [L. '39, Ch. 146, § 23, amending R. C. M. 1935, § 4256. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4257. Weight duly stamped—legal throughout state — resealing. A weight or measure duly stamped by the state sealer of weights and measures, or his deputies, or by the national bureau of standards, shall be a legal weight or measure throughout the state, unless found to be false or incorrect, and shall not be liable to be resealed because used in any other place than that in which it was originally stamped. [L. '39, Ch. 146, § 24, amending R. C. M. 1935, § 4257. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4258. False selling — violation of law — misdemeanor. Whoever sells or offers for sale a less quantity than represented, or sells in a manner contrary to law, shall be guilty of a misdemeanor. [L. '39, Ch. 146, § 25, amending R. C. M. 1935, § 4258. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4260. Obstructing sealer — misdemeanor. Any person who neglects or refuses to produce for the state sealer of weights and measures, or his deputies, all weights, measures, or balances in his possession and used in trade, or on his premises, or refuses to permit the said officers to examine the same, or obstructs the entry of said officers, or otherwise obstructs or hinders any official under this law shall be guilty of a misdemeanor. [L. '39, Ch. 146, § 26, amending R. C. M. 1935, § 4260. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4261. Rules and regulations for deputies — sealer may make — force and effect. The state sealer of weights and measures is hereby authorized to make such rules and regulations for the guidance and direction of his deputies in conformity with this act as may be proper and necessary to carry out the provisions of this act in a uniform manner. Such rules and regulations when adopted by the state sealer of weights and measures shall have the same force and effect as is provided for in this act. [L. '39, Ch. 146, § 27, amending R. C. M. 1935, § 4261. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4263. Arrest — powers of sealer and deputies. The state sealer of weights and measures and his deputies shall be, by virtue of their respective offices, deputy sheriffs, and as such shall have power to arrest and detain any person violating the provisions of this act, without warrant. [L. '39, Ch. 146, § 28, amending R. C. M. 1935, § 4263. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4264. Fines collected — disposition. All fines collected for violation of the provisions of this act shall be paid to the state treasurer for support and maintenance of the department of weights and measures. All justices of the peace and clerks of district courts who may collect any fine imposed for the violation of the provisions of this act must, not later than the fifth of each month, transmit to the state sealer of weights and measures all moneys so collected, after deducting therefrom all costs in each case, and the state sealer of weights and measures shall pay the same to the state treasurer, taking his receipt therefor. [L. '39, Ch. 146, § 29, amending R. C. M. 1935, § 4264. Approved and in effect March 11, 1939.

Note. For penalties for violation see § 4264.1. For repeals see § 4264.2.

4264.1. Violation of act — penalty. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and where no other penalty is herein provided, upon conviction shall be fined not more than five hundred (\$500.00) dollars. [L. '39, Ch. 146, § 30, which chapter amended several sections of R. C. M. 1935, Ch. 330. Approved and in effect March 11, 1939.

4264.2. Repeals. That sections 4233, 4239, 3575.1, 3575.4, 3575.5, 3575.6, 3575.7, revised codes of Montana, 1935, and all acts and parts of acts in conflict herewith are hereby repealed;

Provided, however, this act shall not be construed as repealing any of the provisions of chapter 314, revised codes of Montana, 1935. [L. '39, Ch. 146, § 31. Approved and in effect March 11, 1939.]

CHAPTER 331

REGULATION OF SALE OF APPLES

Section

4265.1. Grades of apples—permissible variation.

4265.1. Grades of apples — permissible variation. The standard grades of apples for the state of Montana shall be: "Extra fancy or first grade", "fancy or second grade", "C", "combination grades", and "XFFC".

(a) "Extra fancy or first grade", shall consist of apples of one variety which are mature, hand picked, clean, well formed, sound, free from bruises, limbrubs, spray burns, sunburn, russetting, drought spot, hail marks, visible water-core, broken skin, apple scab, stings, and from diseases and insect injury, except that slight blemishes shall be permitted in this grade.

(b) "Fancy or second grade" shall consist of apples of one variety which are mature, hand picked, clean, fairly well formed, sound, free from visible water-core, broken skin, and from damage caused by bruises, limbrub, spray burns, sunburn, russetting, drought spot, hail marks, apple scabs, diseases and insect injury.

(c) "C" grade shall consist of apples of one variety which are mature, hand picked, clean, not badly misshapen, sound, free from broken skin and from serious damage caused by bruises, limbrub, russetting, drought spot, hail marks, apple scab, diseases and insect injury, and must have fifteen per centum (15%) of color requirements characteristic of the variety. The word "choice" must not be used in connection with this grade.

(d) Cull apples shall consist of apples free from infection or disease or serious damage but which do not meet the requirements of extra fancy or first grade, fancy or second grade, or of "C" grade and shall be marked in block letters not less than one inch in height on both ends of box "culls".

(e) "Combination grades". When "extra fancy or first grade" and "fancy or second grade" apples are packed together, the boxes must be marked "combination extra fancy or first grade and fancy or second grade". When "fancy or second grade" and "C" grades are packed together, the boxes must be marked

"combination fancy or second grade and, "C". Combination grades must contain at least twenty-five per centum (25%) of apples which belong to the higher grade in the combination.

(f) "XFFC" grade shall consist of "extra fancy or first grade", "fancy or second grade" and "C" grade apples packed in combination. Boxes so marked must contain at least twenty per centum (20%) of apples of "extra fancy or first grade"; fifty (50%) per centum of "fancy or second grade"; and not more than thirty per centum (30%) of "C" grade. No apples failing to meet the requirements of "C" grade shall be permitted in this grade.

(g) No apples smaller than two and one-fourth ($2\frac{1}{4}$) inches in diameter shall be permitted in any grade.

Small apples which are under size requirements as prescribed may be shipped if marked "small" in block letters not less than one inch in height on both ends of box, provided such apples are free from insect pests and diseases.

(h) In order to provide for variations incident to commercial grading and handling a tolerance of ten per centum (10%) for a total of all defects from the standard of the grade shall be allowed. [L. '39, Ch. 89, § 1, amending R. C. M. 1935, § 4265.1. Approved and in effect March 1, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 340

CREATION OF NEW COUNTIES BY PETITION AND ELECTION

4393. Petition for creation of new county—attached affidavits—notice and hearing.

1936. ✓ A freeholder not of record is not entitled to be taken into account in determining whether a petition for election on consolidation of school districts contains the requisite number of signers, and such petition is not to be considered as a pleading in an injunction suit to prevent such consolidation, nor is it to be tested in the manner of testing a pleading. *Swaim v. Redeen*, 101 Mont. 521, 55 P. (2d) 1, holding, further, that such petition need not be held insufficient because every jurisdictional fact does not affirmatively appear in it.

1936. ✓ The number of freeholders in a school district is determined by the registration of deeds in the county records, beyond which the superintendent of a school district need not go in determining whether a petition for consolidation of schools districts has the required number of signers, the verified petition being prima facie evidence of that fact. *Swaim v. Redeen*, 101 Mont. 521, 55 P. (2d) 1.

CHAPTER 341A

ABANDONMENT OF COUNTIES — ABANDONED TERRITORY — ATTACHMENT — VOTE

Section

- 4426.1. Abandonment of counties—attachment of territory to another county—authorization.
- 4426.2. Election — petition — contents — signers — county clerk—duties—additional help—withdrawal of signers.
- 4426.3. Order of election—county commissioners—petition — notice — hearing — publication — petition for attachment — county clerk—duty signers—withdrawal.
- 4426.4. Petitions — sufficiency — determination — county commissioners — resolution—form — signature—copies—transmission.
- 4426.5. Election—call—duty of governor—questions to be submitted—date of election—proclamation—filing—copies.
- 4426.6. Proclamation — notices — issuance—county commissioners — duty — registration — closing—notice.
- 4426.7. Questions to be submitted—forms—election — conduct.
- 4426.8. Election—returns—transmittal to secretary of state—state canvassers—proclamation — duty of governor.
- 4426.9. Abandonment of county—offices—termination—adverse vote in county to which territory was to be attached—effect.
- 4426.10. Townships—offices—justices of peace—constables—divided township.
- 4426.11. Property of abandoned county—attachment of part of territory.
- 4426.12. Property and claims of abandoned county—vesting in county to which territory attached.
- 4426.13. Records — to county to which territory attached — removal — transcripts — territory attached to more than one county — unrecorded instruments—transcription—cost.
- 4426.14. Contracts of abandoned county — printing contracts — contracts postdating filing petition.
- 4426.15. Claims against abandoned county—payable by county to which territory attached—limitation.
- 4426.16. Funds—transfer to designated county—how kept and used—bond funds—delinquent taxes—warrants — payment—transfer of funds to other funds of abandoned county — special warrants district — tax levy in district—rate and spread—special funding bond district—officers of district — bonds to pay warrants—election—conditions of bonds—unpaid bonds of abandoned county—tax levy—statutes applicable—moneys in bond funds of abandoned county — taxation between counties — procedure.
- 4426.17. Fund balances and accruing moneys in abandoned district—disposition.

Section

- 4426.18. Property in abandoned county—taxation in joined county — special warrant district within county joined — special tax — special funding bond district in joined county — bonds — recitals — tax levies — statutes applicable — taxation in abandoned county for bonds in joined county.
- 4426.19. Assessments—abandoned county—assessor's duty—assessor in joined county—current assessments.
- 4426.20. Property in abandoned county—use and disposition—personal property—appraisal before sale—real property—leasing—sale — purchase price—payment—assessment—bill of sale — appraiser — moneys—transmission—personal property sales receipts — disposition.
- 4426.21. Abandoned county—indebtedness—intention of act.
- 4426.22. School and special districts—continuance—numbers—change—funds.
- 4426.23. Abandoned county high school—trustees—funds — transfer — application — sinking fund and interest—warrants—payment—unpaid taxes.

4426.1. Abandonment of counties — attachment of territory to another county — authorization. The organization and corporate existence of any county organized under the laws of this state may be abandoned and abolished and the territory within its boundaries attached to and made a part of some adjoining county in the manner provided by this act. [L. '37, Ch. 105, § 1. Approved and in effect March 15, 1937.

4426.2. Election — petition — contents — signers — county clerk — duties — additional help — withdrawal of signers. A petition may be filed with the county clerk of a county, asking that the question of abandoning and abolishing the organization and corporate existence of such county and attaching its territory to and making the same a part of some adjoining county, be submitted to the qualified electors of such county at an election. Such petition shall state the name of the adjoining county to which the territory of such county, so to be abandoned and abolished, shall be attached and made a part; such petition shall be signed by not less than thirty-five per centum (35%) of the qualified electors of the county whose names appear upon the registration records of such county, shall contain the post office address and voting precinct of each person signing the same, and shall state the name and address of three persons to whom notice of the insufficiency of the petition shall be sent in the event that the petition shall not have the required number of signatures of qualified electors signed thereto. It shall be the duty of the county clerk, within thirty days after the filing of such petition to

examine the same, to ascertain and determine from the registration records of the county whether such petition is signed by the required number of qualified electors. Such clerk may be authorized by the board of county commissioners to employ additional help in his office to assist him in the work of examining such petition and such board shall provide for their compensation. When such examination is completed said clerk shall forthwith attach to such petition his certificate, properly dated and signed, showing the result of his examination, and if said certificate shows that said petition is signed by the required number of qualified electors, said clerk shall immediately present said petition to the board of county commissioners, if such board be then in session, otherwise at its first regular meeting after the date of such certificate. No person, after signing any such petition shall be allowed or permitted to withdraw his signature or name therefrom. [L. '37, Ch. 105, § 2. Approved and in effect March 15, 1937.]

4426.3. Order of election — county commissioners — petition — notice — hearing — publication — petition for attachment — county clerk — duty — signers — withdrawal. Whenever any such petition is presented to the board of county commissioners of a county with a certificate of the county clerk attached thereto, showing that said petition has been signed by not less than thirty-five per centum (35%) of the qualified electors of such county whose names appear upon the registration records of said county, as provided in section 2 [4426.2] of this act, said board of county commissioners shall immediately upon presentation of such petition, make and enter an order in its minutes fixing a day for considering and taking final action on said petition, which shall be not less than thirty (30) nor more than thirty-five (35) days after the date when said order is made, and shall cause a notice to be published in the official newspaper of the county to the effect that such petition has been presented to such board asking for the abandonment and abolishment of the county and that said board will meet at the time specified in said order for considering and taking final action on said petition, at which time any and all registered electors of the county interested therein may appear and be heard thereon. Such notice shall be published once a week for two (2) successive weeks immediately following the making of such order.

At any time prior to five (5) days before the date fixed for consideration and final action on such petition fifty per centum (50%) of the registered electors residing within a

particular part or portion of such county, may file with the county clerk of such county a petition in writing signed by them praying that the part or portion of such county within which such petitioners reside shall not be attached to the county designated in the petition for abandonment but shall be attached to some other adjoining county, which petition shall definitely, particularly and accurately describe the boundaries of such part or portion of said county which said petitioners desire to be attached to such other adjoining county and shall specify and name such other adjoining county to which such part or portion is to be attached if said county is abandoned and abolished. Whenever any such petition is filed the county clerk shall immediately examine the same and determine from the registration records of the county whether such petition has been signed by the required number of registered electors and shall attach thereto his certificate showing the total number of registered electors residing within the boundaries described in said petition and the number thereof whose names appear on said petition, and shall deliver such petition with such certificate attached, to the board of county commissioners when such board meets to consider and take final action on such petition for abandonment, separate and independent petitions may be filed by registered electors residing within the boundaries of separate and distinct and different parts or portions of such county, praying that the territory embraced within the boundaries described therein may be attached to and become parts of the same, or different adjoining counties, other than the county named and designated in the petition for abandonment, if said county is abandoned. No person after signing any such petition shall be allowed or permitted to withdraw his signature or name therefrom. [L. '37, Ch. 105, § 3. Approved and in effect March 15, 1937.]

4426.4. Petitions — sufficiency — determination — county commissioners — resolution — form — signature — copies — transmission. On the day fixed by the board for consideration and final action on such petition for abandonment the board shall meet and examine and consider all petitions which may have been filed praying that particular parts or portions of said county, if abandoned, be attached to an adjoining county or counties, other than the county named in such petition for abandonment, and shall determine the sufficiency of each such petition filed, and shall enter its findings with regard thereto in its minutes, and said board shall thereupon adopt a resolution, which shall be in writing and

also entered in full in its minutes, and which shall be in substantially the following form:

WHEREAS, there has been filed with the clerk of (name) county, Montana, a petition asking that the organization and corporate existence of said county be abandoned and abolished and its territory attached to and made a part of an adjoining county, to wit, the county of (name), Montana;

AND WHEREAS, said petition has been presented to the board of county commissioners of (name) county, with a certificate of the clerk of said county attached thereto showing that said petition has been signed by not less than thirty-five per centum (35%) of the registered electors of said county;

(If any petition for attaching any part or portion of the county, in case of abandonment to an adjoining county or counties, other than the county named in the petition for abandonment, and found to have been signed by the required number of registered electors, insert the following for each petition)

AND WHEREAS, there has been filed a petition signed by not less than fifty per centum (50%) of the registered electors residing within that part or portion of said county described as (give description as contained in petition) praying that the part or portion of said county within such boundaries be attached to and made a part of the county of (name of county given in petition) if said county be abandoned;

NOW THEREFORE BE IT RESOLVED, that if said (name) county shall be abandoned and abolished the territory embraced within its boundaries shall be attached to and become part of the following. (If all to be attached to one adjoining county so state, but if parts or portions to any other county or counties, then describe the part or portion to go to each adjoining county as well as to the county named in the petition for abandonment.)

AND BE IT FURTHER RESOLVED, that the county clerk of (name) county, Montana, make copies of this resolution, each with a copy of said petition for abandonment, with the signatures omitted therefrom (and copies of petitions for attaching parts or portions of said county to adjoining county or counties, other than the county named in the petition for abandonment, if any were filed and found sufficient, with signatures omitted) and certify to the same and affix the seal of the county thereto, and transmit one of said copies to the governor of the state of Montana, and one of said copies to the clerk of each county to which any part of said county is to be attached, if abandoned.

Said resolution must be signed by the members of the board of county commissioners and the county clerk must, within five (5) days thereafter, make the certified copies of said resolution, with copy of petition or petitions attached, and transmit one copy to the governor of the state of Montana and one copy to the county clerk of each county to which any part or portion of said county is to be attached, if abandoned. [L. '37, Ch. 105, § 4. Approved and in effect March 15, 1937.]

4426.5. Election — call — duty of governor — questions to be submitted — date of election — proclamation — filing — copies. Upon receipt of a certified copy of the resolution provided for in section 4 [4426.4] of this act, the governor shall, within ten days thereafter, issue his proclamation calling a special election in the county in which the petition referred to in said resolution was filed, and in each county designated in such resolution as a county to which any of the territory of such county, if abandoned and abolished, shall be attached and made a part, at which election there shall be submitted to the qualified electors of the county in which such petition was filed the question of whether or not such county shall be abandoned and abolished and its territory attached to and made a part of the county designated and named for such purpose in said petition, and at which election there shall be submitted to the qualified electors of each county named and designated in such resolution as a county to which a part of the territory of the county, proposed to be abandoned and abolished, shall be attached and made a part, if such county shall be so abandoned and abolished, the question of whether or not such part of the territory of such county, if abandoned and abolished, described in such resolution, shall be attached to and become a part of such county. Such proclamation shall fix a day for holding such election in such counties, which shall be not less than ninety days nor more than one hundred and twenty days after the date of the date of the governor's proclamation calling the same; provided that if a general election will be held in said counties within one hundred and twenty days after the date of such proclamation, the governor, in such proclamation, shall direct that such question be submitted to the qualified electors of said counties at such general election. Such proclamation shall be filed in the office of the secretary of state and copies thereof shall be transmitted by the governor to the county clerk of each of the counties in which such election is to be held. [L. '37, Ch. 105, § 5. Approved and in effect March 15, 1937.]

4426.6. Proclamation — notices — issuance — county commissioners — duty — registration — closing — notice. The county clerk of each of such counties after receiving a copy of such election proclamation shall present the same to the board of county commissioners, if such board is then in session, and if not in session, then at the first meeting thereof held after such clerk has received the same, and the board of county commissioners of each of such counties shall issue such proclamations and give such notices of election as are required by the general laws of this state when questions are to be submitted to the qualified electors of a county at an election and which proclamation and notices shall include a description of the boundaries of that part of the county proposed to be abandoned and to be attached to and made a part of such county, if said county be abandoned, and the county clerk of each of such counties shall give notice of the closing of the registration books and shall cause the same to be closed at the time and in the manner provided by the general registration and election laws of this state. [L. '37, Ch. 105, § 6. Approved and in effect March 15, 1937.]

4426.7. Questions to be submitted — forms — election — conduct. At such election the question to be submitted to the qualified electors of the county in which said petition was filed shall be as follows:

☐ For the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name)

☐ Against the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).

And the question to be submitted to the qualified electors of the counties, designated in the resolution as the county or counties to which the territory of the county proposed to be abandoned and abolished, is to be attached and made a part, shall be as follows:

☐ For attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

☐ Against attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

Said election shall be held, voted, counted and returns made and canvassed in the manner provided by the general election laws of this state. [L. '37, Ch. 105, § 7. Approved and in effect March 15, 1937.]

4426.8. Election — returns — transmittal to secretary of state — state canvassers — proclamation — duty of governor. The board of county commissioners of each county, acting as a canvassing board, must within ten (10) days after the holding of such election canvass the returns of such election, and within five (5) days thereafter the clerk of each such county must make and enter in the records of said board a statement of the vote in such county and transmit [transmit] to the secretary of state, by registered mail, an abstract thereof, which shall be marked "election returns". Within ten (10) days after receiving such abstracts from all counties in which such election was held, and on notice from the secretary of state, the board of state canvassers shall meet and canvass, compute and determine the vote, and the secretary of state, as secretary of such board must make and file in his office a statement thereof and transmit a copy thereof to the governor. Upon receipt of such copy the governor shall issue a proclamation declaring the result of such election and shall file a copy of such proclamation in the office of the secretary of state and transmit a copy of such proclamation to the county clerk of each of the counties in which such election was held, and each such county clerk shall file the same in his office and present the same to the board of county commissioners of his county, if such board is then in session, otherwise at the first meeting of the board after the same has been received by such clerk. [L. '37, Ch. 105, § 8. Approved and in effect March 15, 1937.]

4426.9. Abandonment of county — offices — termination — adverse vote in county to which territory was to be attached — effect. If, at such election a majority of the votes cast in the county in which such petition was filed shall be cast in favor of the abandonment and abolishment of such county, and a majority of the votes cast in the county, designated in the petition for abandonment as the county to which the territory of the abandoned county shall be attached, shall be in favor thereof, then the organization and political and corporate existence of the county in which such petition for abandonment was filed shall cease and terminate and said county shall be abandoned and abolished and disincorporated and cease to exist and its territory shall be attached to and become a part of the counties designated in the resolution adopted under

section 4 [4426.4] of this act, and the term of office of each of the officers thereof, and of the members of the board of county commissioners thereof, and of its senator and representative in the legislative assembly shall cease and terminate at twelve (12:00) o'clock midnight on the thirtieth day of June immediately following; provided that if at any such election a majority of the votes cast in any adjoining county named in the resolution adopted under section 4 [4426.4] of this act, other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county shall attach, shall be against the attaching of any portion of the territory of the abandoned county to such adjoining county, then such portion of such territory described in said resolution shall be attached and become a part of the county designated in such resolution for abandonment as the county to which the territory of the abandoned county shall attach. [L. '37, Ch. 105, § 9. Approved and in effect March 15, 1937.]

4426.10. Townships — offices — justices of peace — constables — divided township. The townships of a county abandoned and abolished under this act shall be townships of the county to which the territory within such townships is attached until such time as they may be changed by the board of county commissioners of such county and the justices of the peace and constables in such townships shall continue to hold such offices for the terms for which they were elected; provided that if a township of such abandoned county is divided and a part attached to one and a part attached to another adjoining county then the board of county commissioners of the county to which attached, until further order of such board, shall attach such territory to an adjoining township within such county, and the terms of office of the justices of the peace and constables within such divided township shall cease and terminate at twelve (12:00) o'clock midnight of the thirtieth day of June immediately following. [L. '37, Ch. 105, § 10. Approved and in effect March 15, 1937.]

4426.11. Property of abandoned county — attachment of part of territory. Each county to which any part of the territory of an abandoned county is attached and made a part shall succeed to, have, possess and own all real estate, and all improvements thereon, and all tangible property and all county highways situated within the territory of the abandoned county attached to such county, and all certificates of tax sale to lands and improvements thereon situated within such territory, and shall have the same right and power to sell

and assign such certificates and to apply for and obtain tax deeds to such lands and improvements, and to sell and dispose of the same as were or would have been possessed by the abandoned county if it had not been abandoned. [L. '37, Ch. 105, § 11. Approved and in effect March 15, 1937.]

4426.12. Property and claims of abandoned county — vesting in county to which territory attached. The county designated in the petition for the abandonment of a county as the county to which the territory of the abandoned county shall be attached, subject to the provisions of this act, shall succeed to, have, possess and own all other property, assets, liens, right, remedies and claims of every kind owned and belonging to or possessed by the abandoned county on the date when the same ceases to exist, and shall have the right to demand, collect and receive any and all moneys to which such abandoned county was entitled for taxes for which tax sales had not been held, licenses and other demands remaining unpaid on the date when such abandoned county ceased to exist and to enforce in any manner authorized by law any and all of such rights, remedies and claims. [L. '37, Ch. 105, § 12. Approved and in effect March 15, 1937.]

4426.13. Records — to county to which territory attached — removal — transcripts — territory attached to more than one county — unrecorded instruments — transcriptions—cost. All maps, plats, papers, documents, records, record books, indexes and files of every kind and description belonging to an abandoned and abolished county, or in the possession of any of the officers thereof, on the date when such county ceases to exist, shall be, immediately after such county ceases to exist, removed to the county seat of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached, and the same shall be delivered over to the custody of the proper officers of such county and be placed in the proper offices thereof, and shall thereafter constitute the maps, plats, papers, documents, records, record books, indexes and files of such county, and the cost and expense of such transfer and removal shall be paid by warrants ordered drawn and issued by the board of county commissioners of such county against the general fund of such abandoned and abolished county.

If any part of an abandoned county shall be attached to and become a part of any adjoining county, other than the county designated in the petition for abandonment, it shall be the duty of the board of county commissioners

of the county designated in said petition for abandonment, to enter into a contract with some competent person or persons for transcribing so much of the records of said abandoned county as affects or relates to the property in that portion of the abandoned county which has been attached to such other county, and to prepare complete and proper indexes for such transcribed records, and when completed to transmit such transcribed records and indexes to such other county; provided, that if portions of such abandoned county have been attached to more than one adjoining county, the board of county commissioners may enter into separate contracts for transcribing the records for each of such other counties or may enter into one contract for transcribing the records for all of such other counties; provided that chattel mortgages, mechanic and other liens, and other instruments filed, but not recorded, shall not be transcribed, but the original instruments shall be transmitted to such other county or counties. The cost of transcribing, indexing and transmitting such records shall be paid by warrants drawn by the board of county commissioners letting such contracts on the general fund of the abandoned county. All of the provisions of sections 4412, 4413 and 4414, revised codes, 1935, shall apply to such transcribed records. [L. '37, Ch. 105, § 13. Approved and in effect March 15, 1937.]

4426.14. Contracts of abandoned county — printing contracts — contracts postdating filing petition. All valid and existing contracts entered into by a county abandoned and abolished under this act, and which, by the terms thereof, will extend beyond the time when such county ceases to exist, shall continue in full force and effect as contracts of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached and made a part; provided that if the abandoned and abolished county shall have theretofore entered into a printing contract in accordance with the provisions of sections 4482 to 4482.2, inclusive, revised codes, 1935, or acts amendatory or supplemental thereto, and such contract shall be in full force and effect on the date when such county ceases to exist, all supplies and printing for the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached and made a part shall be, by the board of county commissioners of such county divided between such contract and any similar existing contract entered into by the board of county commissioners of such county in such manner as such board of county commissioners shall deem

equitable and just to the holders of both such contracts until the contract entered into by the abandoned and abolished county shall have expired; provided further, that when a petition has been filed with the county clerk of a county for the abandonment and abolishment of such county, in accordance with the provisions of section 2 [4426.2] of this act, the board of county commissioners of such county shall not thereafter enter into any contract under the provisions of said sections 4482 to 4482.2 or amendatory or supplemental acts, until the time has expired when such petition may be presented to such board by the county clerk as provided in section 2 [4426.2] of this act. [L. '37, Ch. 105, § 14. Approved and in effect March 15, 1937.]

4426.15. Claims against abandoned county — payable by county to which territory attached — limitation. All claims and demands for salaries, services, wages, materials, supplies and for all other current expenses and for claims and demands accruing under contracts, against any abandoned and abolished county, and for which said county was liable at the time it ceased to exist and which had not been approved and warrants issued therefor prior to the time it ceased to exist, shall be presented to the board of county commissioners of the county designated in the petition for abandonment as the county to which its territory is attached and made a part and all such claims and demands shall be acted on by the board of county commissioners of such county and warrants shall be issued in payment thereof in the same manner as though the same had been incurred by such county; provided that all such warrants shall be drawn and issued against the proper funds of such abandoned and abolished county; and provided further, that no such claim or demand shall be approved or warrant issued in payment thereof if the amount of such claim or demand exceeds the unexpended balance of appropriation for such purpose contained in the budget of the abandoned and abolished county for the year in which the same was incurred. [L. '37, Ch. 105, § 15. Approved and in effect March 15, 1937.]

4426.16. Funds — transfer to designated county — how kept and used — bond funds — delinquent taxes — warrants — payment — transfer of funds to other funds of abandoned county — special warrants district — tax levy in district — rate and spread — special funding bond district — officers of district — bonds to pay warrants — election — conditions of bonds — unpaid bonds of abandoned county — tax levy — statutes applicable — moneys in bond funds of abandoned county — taxation between

counties — procedure. All moneys in each of the funds of an abandoned and abolished county shall be transferred to and paid over by the treasurer thereof to the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and becomes a part and shall be by such treasurer kept and maintained in separate funds in the name of such abandoned and abolished county, and used and applied for paying warrants issued against such funds by the abandoned and abolished county prior to the time it ceased to exist, and for paying warrants issued against such fund by the board of county commissioners of the county to which it is attached and becomes a part under the provisions of sections 13 and 15 [4426.13 and 4426.15] of this act, and the interest on such warrants; provided that moneys in any bond sinking and interest funds of such abandoned and abolished county shall be used and applied for the sole purpose of paying the interest and principal becoming due on unpaid and outstanding bonds of such county. Taxes levied for all such funds which were delinquent on the days when such county ceased to exist, and for which tax sales had not been held and all licenses and other moneys owing to such county at such time shall be collected by the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and becomes a part and placed in and deposited to the credit of the funds of such abandoned and abolished county to which the same properly belong. When all warrants issued and outstanding against any fund of an abandoned and abolished county, with the interest thereon, have been fully paid, any balance standing to the credit of such fund shall be transferred to any other fund or funds of such county in which there is not sufficient money to pay the warrants issued and outstanding against the same with interest thereon, and if, after payment of all warrants issued against all such funds and balances remain in any thereof the same shall be transferred to and become a part of the bond sinking and interest funds of such abandoned county.

(a) After all warrants have been drawn and issued against the funds of an abandoned and abolished county under the provisions of sections 13 and 15 [4426.13 and 4426.15] of this act, if it shall appear to the satisfaction of the board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached and made a part, that the money in the several funds of such abandoned and

abolished county, together with all moneys which may be received for such funds from the payment and collection of delinquent taxes, unpaid licenses and other sources, owing to such abandoned and abolished county, will be insufficient to pay all outstanding and unpaid warrants issued and drawn against such funds, then the board of county commissioners of such county shall make an order creating a special warrant district and shall include within such district all of the territory embraced within the boundaries of the abandoned and abolished county at the time it ceased to exist, and said board shall thereafter, and at the time of making and fixing tax levies for county purposes, make and fix a levy against all taxable property within such special warrant district for the payment of said warrants and the interest thereon, and the proceeds of such levy, when collected, shall be deposited by the county treasurer in a separate fund which shall be used for the payment of said warrants and interest and for no other purpose; provided that said tax levy need not be made at such a rate as will pay all of said warrants, with interest, in one year, but if said board of county commissioners shall deem it for the best interests of the taxpayers owning property within such special warrant district, such levy may be spread over a term of not more than three years.

(b) If it shall appear to the satisfaction of the board of county commissioners that a tax levy sufficient to pay such warrants and interest when spread over a term of three years will be too great a hardship on and too burdensome to the taxpayers owning property within the boundaries of such abandoned and abolished county, said board, instead of creating such special warrant district shall create and establish a special funding bond district and shall include within the boundaries thereof all of the territory embraced within the boundaries of such abandoned and abolished district at the time it ceased to exist. The board of county commissioners and the county clerk of the county to which the territory of such abandoned and abolished county has been attached and made a part shall be, respectively, the board of trustees and the clerk of such district and the county treasurer shall act as the treasurer thereof. The board of trustees shall adopt an appropriate seal for such district. After such district has been created and established the board of trustees shall direct the county treasurer to use and apply all moneys in the several funds of the abandoned and abolished county, except moneys in any bond sinking and interest funds, to the payment of warrants issued and outstanding against such funds, with the

interest thereon, and said board of trustees shall thereupon issue and sell bonds of such special funding bond district in an amount sufficient to pay all warrants against such funds remaining outstanding and unpaid, with the interest thereon, and the proceeds derived from the sale of such bonds shall be used for such purpose and no other. Such bonds shall not be issued for a longer period than ten (10) years, and shall be issued without submitting the question of doing so to any election. There shall be inserted and made a part of each such bond statements setting forth the purpose for which the same are issued and that said bonds do not incur, create or constitute any indebtedness or obligation whatever on the part of the county of (naming the county whose board of county commissioners, acting as such trustees, are issuing such bonds) but that the principal and interest thereof will be paid by special millage taxes levied against all of the taxable property situated within the boundaries of such special funding bond district. Such bonds shall be issued in the name of such district, shall be signed by the trustees, the clerk shall attest the same and affix the seal of the district thereof and they shall be registered in the office of the county treasurer who shall certify such registration on such bonds. Except as otherwise provided herein, and in so far as the same are not in conflict herewith, all of the provisions of chapter 356 revised codes 1935, and amendatory acts shall apply to, govern and control the issuance, sale and payment of such bonds, with the interest thereon, and the levying of taxes for such purposes. All taxes levied for the payment of the principal and interest of such bonds and all taxes levied by the abandoned and abolished county for all of its funds, except, bond sinking and interest funds, and delinquent at the time such county ceased to exist, and all moneys owing to such abandoned and abolished county from all other sources, shall be, when collected, paid into a special sinking and interest fund and used for the purpose of paying the principal and interest of such bonds, and for no other purpose.

(c) If any abandoned and abolished county shall have outstanding and unpaid any bonds at the time it ceases to exist, the territory within the boundaries of such county as they existed when such county so ceased to exist, shall constitute a special district for the payment thereof. The board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of such county is to be attached and made a part shall annually levy a tax against all taxable property in such taxing

district sufficient to pay the interest and principal of such bonds as the same become due, and all of the provisions of chapter 356 revised codes 1935, and amendatory acts, applicable thereto, shall apply to, govern and control the levy and collection of such taxes and the payment of interest and principal thereof by the boards and officers of the county within which such district is situated.

Any and all moneys in any bond sinking and interest funds of such abandoned and abolished county, when transmitted and paid over to the treasurer of the county to which the territory of such abandoned and abolished county has been attached, shall be credited to and deposited in a sinking and interest fund, and all taxes levied for the payment of such bonds and interest and delinquent at the time such county ceased to exist, and all taxes levied for such sinking and interest fund in accordance with the provisions of this section, and all other moneys coming to the hands of such county treasurer for the use or benefit of such abandoned county when not required for any other purposes under the provisions of this act, shall be deposited to the credit of such sinking and interest fund and used for the payment of the principal and interest of such bonds and for no other purpose.

Whenever any levy is made under the provisions of subdivisions (a), (b) or (c) of this section the county clerk of the county in which the board of county commissioners make such levy shall immediately certify such levy to the county clerk of each other county to which any part of the territory of the abandoned county has been attached, and the county clerk of each such other county shall compute and extend the taxes against the property within the portion of the abandoned county which has been attached to his county and the treasurer of such county shall collect the same at the same time and in the same manner that other taxes are collected by said county treasurer, and each such treasurer shall, at least twice each year, once during the second week in December and once during the second week in June, transmit the amount of all such taxes paid to and collected by him, and then in his hands as county treasurer, to the treasurer of the county in which the board of county commissioners made such tax levy. [L. '37, Ch. 105, § 16. Approved and in effect March 15, 1937.]

4426.17. Fund balances and accruing moneys in abandoned district — disposition. If, after all warrants issued and drawn by an abandoned and abolished district during its existence against its several funds and all warrants drawn and issued against said funds

under the provisions of sections 13 and 15 [4426.13 and 4426.15] of this act, have been fully paid with the interest thereon, any balance remains in such funds, such balance, with any and all moneys thereafter accruing to any of such funds from the collection of delinquent taxes, unpaid licenses, and from other sources shall be deposited to the credit of any special sinking and interest fund for the payment of district funding bonds issued under the provisions of subdivision (b) of section 16 [4426.16] of this act, and if there be no such fund then to the credit of any bond sinking and interest fund under subdivision (c) of section 16 [4426.16] of this act; and after all warrants issued and drawn against any of such funds with the interest thereon, all district funding bonds issued under the provisions of subdivision (b) of section 16 [4426.16] of this act and all bonds referred to in subdivision (c) of section 16 [4426.16] of this act, have been fully paid, then any balance remaining in any of such funds and all moneys accruing to any or all of such funds thereafter from any and all sources, shall be deposited to the credit of such funds of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county has been attached and made a part as its board of county commissioners may direct. [L. '37, Ch. 105, § 17. Approved and in effect March 15, 1937.]

4426.18. Property in abandoned county — taxation in joined county — special warrant district within county joined — special tax — special funding bond district in joined county — bonds — recitals — tax levies — statutes applicable — taxation in abandoned county for bonds in joined county. Whenever a county is abandoned and abolished and its territory is attached to and made a part of an adjoining county, under the provisions of this act, none of the property situated within the boundaries of such abandoned and abolished county shall be subjected to taxation or taxed for the payment of any indebtedness of such adjoining county which may exist at the time such territory is attached to and made a part of such adjoining county.

(a) After all warrants have been drawn and issued against the funds of such adjoining county to pay the claims and demands existing against such county, on the date when the territory of such abandoned and abolished county was attached to such adjoining county, all moneys in the funds of such adjoining county shall be used and applied in payment of the warrants drawn against its respective funds, and if such moneys are not sufficient to pay all of such warrants, with the interest thereon, then the board of county commis-

sioners shall make an order creating a special warrant district and shall include within such district all of the territory of such adjoining county, but shall not include therein any of the territory of such abandoned and abolished county, and shall thereafter and at the time of making levies for county purposes, levy a special tax against all taxable property in such district to pay the warrants, with interest thereon, outstanding against the funds of said county; provided that the board of county commissioners, may, in its discretion extend such tax levy over a period of not to exceed three years.

(b) If it shall appear to the board of county commissioners that it will require too large a tax levy to pay such warrant indebtedness with interest thereon within three years, such board, instead of creating a special warrant district, shall create and establish a special funding bond district and shall include within the boundaries thereof all of the territory within such adjoining county, but shall not include therein any of the territory of the abandoned and abolished county attached to such adjoining county. Such board of county commissioners may, after all moneys in the several funds of said county applicable thereto, have been applied in payment of such outstanding warrants and interest thereon, and without submitting the question of doing so to an election, may issue bonds in an amount sufficient to pay and redeem all such warrants remaining outstanding, with interest thereon. Such bonds shall be issued in the name of said adjoining county, and shall contain recitals to the effect that the principal and interest thereof will be paid by millage tax levies against the property situated within the boundaries of said county as the same existed before the territory of such abandoned and abolished county was attached thereto, and that none of the property within the territory of such abandoned and abolished county will be subjected to such levies. Except as otherwise provided herein said bonds shall be issued and sold, tax levies shall be fixed and made to pay the principal and interest thereof as the same becomes due in the manner provided by chapter 188 session laws 1931 and amendatory acts, and all the provisions thereof, so far as applicable thereto, shall apply to such bonds.

(c) If an adjoining county to which the territory of an abandoned and abolished county is attached and made a part shall have outstanding and unpaid bonds, at the time such territory is attached to and made a part of such county, such bonds shall be the indebtedness of such adjoining county, and none of the property situated within the territory of the abandoned county shall be subjected to

any taxes to pay the principal or interest of such bonds, but such taxes shall be levied only against the property within the boundaries of such adjoining county as the same existed before the territory of the abandoned and abolished county was attached to and made a part thereof. [L. '37, Ch. 105, § 18. Approved and in effect March 15, 1937.]

4426.19. Assessments — abandoned county — assessor's duty — assessor in joined county — current assessments. The county assessor of a county abandoned and abolished under the provisions of this act shall, within ten (10) days after it comes to exist deliver to the county assessor of each county to which any part of its territory had been attached and become a part of all assessment lists, reports, documents and instruments relating to, concerning, or in any way affecting the assessment during the then current assessment year of all taxable property within such portion of such abandoned and abolished county, and it shall be the duty of the assessor of the county, to whom such assessment lists, reports, documents and instruments have been delivered by the assessor of the abandoned and abolished county, to complete all assessments and to fully assess, during the then current assessment year, all taxable property situated or located, on the first Monday of March of such year, within the boundaries of such part of such abandoned and abolished county, and each such county assessor shall, in all matters and things connected in any way with the making of such assessments, have, possess and exercise all of the powers and rights and shall perform all of the duties which the assessor of the abandoned and abolished county would, or could have had, possessed, exercised or performed if such county had not been abandoned and abolished. The county assessor of such abandoned and abolished county shall, until twelve (12:00) o'clock midnight of the thirtieth day of June when said county ceases to exist, aid and assist the county assessors of the counties to which any part of the territory so to be abandoned and abolished will be attached and made a part, in the listing and assessing of all taxable property situated or located within each of such counties to the end that all taxable property within the boundaries of such abandoned county will be fully assessed and taxed. [L. '37, Ch. 105, § 19. Approved and in effect March 15, 1937.]

4426.20. Property in abandoned county — use and disposition — personal property — appraisal before sale — real property — leasing — sale — purchase price — payment — assessment — bill of sale — appraiser — moneys — transmission — personal property sales receipts

— disposition. Each county to which any part of an abandoned and abolished county is attached and made a part and becoming the owner under the provisions of this act of the real and any tangible personal property of an abandoned and abolished county may use all of such property for county purposes, or may lease any of such real estate or sell any of such real estate or personal property provided that no such personal property having a value in excess of one hundred dollars (\$100.00) shall be sold unless the same has been appraised within one year immediately prior to the date of sale by three taxpayers, residing within the territory embraced within the boundaries of the abandoned and abolished county, appointed by the judge of the district court to which the county succeeding to the ownership of such property is attached, on petition of the board of county commissioners thereof, and no sale of any such personal property shall be made except at public sale after notice or for a price less than ninety per centum (90%) of such appraised value; provided further, that no such real property shall be leased unless the board of county commissioners shall present to the judge of the district court to which the county is attached a petition describing the real estate, with any improvements thereon, and setting forth the terms of the proposed lease, and the same shall be approved by such judge, which approval shall be endorsed on such petition and filed in the office of the clerk of said county; and provided further that no real estate shall be sold by said board of county commissioners unless the same has been appraised within one year immediately prior to the date of sale by three taxpayers residing within the territory embraced within the boundaries of the abandoned and abolished county, appointed by the judge of the district court to which the county is attached, on petition of the board of county commissioners of such county, and every such sale of real estate shall be made at public sale and notice of such sale shall be published once a week for at least two weeks immediately prior to the date for holding the same, in the official newspaper of the county, and no such real estate shall be sold for a price less than ninety per centum (90%) of the appraised value thereof.

The full purchase price of any real estate so sold shall not be required to be made in one payment but the purchaser thereof may pay the same in four installments, the first of which shall be not less than twenty-five per centum (25%) of the purchase price to be paid at the time of purchase, the remainder to be paid in three equal annual installments with interest thereon at not less than five per

centum (5%) per annum. All real estate sold, with any improvements thereon, shall be subject to assessment and taxation annually to the purchaser or his successor in interest, at a value equal to the amount paid on the purchase price thereof until the purchase price is fully paid when such real estate shall be assessed at its full cash value, and any and all improvements placed on any such real estate, after its purchase, shall be subject to assessment and taxation at the full cash value thereof. Whenever the purchase price of any real estate is to be paid in installments the board of county commissioners shall enter into a contract with the purchaser thereof and such contract shall be recorded in the office of the county clerk. When payment in full has been made for any personal property or real estate the chairman of the board of county commissioners shall execute and deliver the proper bill of sale or deed to the purchaser, or his successor in interest.

The compensation of all appraisers appointed under the provisions of this section shall be fixed by the district judge appointing the same. Moneys received from leases or sales of real or personal property by any county other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county is to be allocated shall be transmitted by the officers of such counties to the treasurer of the county designated in such petition for abandonment. All moneys received from the sales of personal property and from the leasing or sales of real estate, after deducting therefrom the amounts paid appraisers and for publishing notices of sale, shall be used and applied as follows: If there are any warrants issued and outstanding against any of the funds of the abandoned and abolished county such moneys shall be applied in payment of such warrants and interest; if there are no such warrants outstanding but district bonds have been issued under the provisions of subdivision (b) of section 14 [4426.14] of this act then such moneys shall be deposited in the sinking and interest fund for such district bonds; if there be no such district bonds outstanding then such moneys shall be deposited to the credit of the sinking and interest funds for bonds issued and outstanding when the abandoned and abolished county ceased to exist, and if there be no such bonds outstanding and unpaid, then such moneys shall be apportioned to all of the counties to which parts of the abandoned county were attached in the proportion which the assessed valuation of the property in each such part on the first day of January immediately preceding the abandonment bears to the assessed valuation of all

the property in such abandoned county and deposited in such funds of such county as the boards of county commissioners of such counties may direct. [L. '37, Ch. 105, § 20. Approved and in effect March 15, 1937.]

4426.21. Abandoned county — indebtedness — intention of act. It is intended by the provisions of this act that no part of the indebtedness of an abandoned and abolished county shall be assumed by, become an obligation of or paid by a county to which the territory of the abandoned and abolished county is attached and made a part, but that all moneys in all funds of an abandoned and abolished county at the time it ceases to exist and all moneys thereafter received by such funds from the payment of taxes delinquent, unpaid licenses and from all other sources, owing to such county at the time it ceased to exist, and all moneys received from the rental or sale of the property owned by such county shall be used for the payment of its indebtedness existing at the time it ceased to exist and the cost and expense of attaching its territory to and making it a part of any adjoining county, and such county to which any part of its territory is attached and made a part shall receive only such balance of any such moneys as may remain after all of the such indebtedness and cost is fully paid. [L. '37, Ch. 105, § 21. Approved and in effect March 15, 1937.]

4426.22. School and special districts — continuance — numbers — change — funds. All school districts and other special districts of an abandoned and abolished county shall continue as and be such school districts and special districts of the county to which such territory is attached and becomes a part, and the members of the boards of trustees or directors of such school districts or other special districts shall continue to be the trustees and directors thereof until the terms of office for which they were elected or appointed shall expire; provided that if any of such school districts shall bear the same numbers as school districts of the county to which the territory within the boundaries of such abandoned and abolished county is attached and made a part, the county superintendent shall either renumber the school districts of said abandoned and abolished county or shall give them such designation, in addition to their numbers, as will distinguish them from the districts in the county to which such territory is attached and made a part; and provided further that if the territory of any school district shall be divided and parts attached to two or more counties such school district shall be a joint school district of such counties.

All funds of all school districts and of all other special districts of an abandoned and abolished county shall be transferred to and paid over to the county treasurer of the county to which the territory of such school district is attached and becomes a part, and shall be accounted for by said county treasurer as the funds of such districts, provided that if a joint school district is created the state superintendent of public instruction shall designate the county treasurer to whom such funds are to be transferred and paid over. All taxes levied for all school funds and funds of other special districts of such abandoned and abolished county, remaining unpaid at the time said county ceased to exist, and all other moneys which would have accrued to such funds if said county had not been abandoned and abolished, when received by such county treasurer, shall be deposited to the credit of the proper school or special district funds. [L. '37, Ch. 105, § 22. Approved and in effect March 15, 1937.]

4426.23. Abandoned county high school — trustees — funds — transfer — application — sinking fund and interest — warrants — payment — unpaid taxes. If a county high school shall have been established in any abandoned and abolished county when such county ceases to exist such county high school shall become the high school of the district in which it is situated or located, and all property, both real and personal owned by such county or acquired for and used in connection with the maintenance and operation of such county high school, shall become and be the property of such school district to be used by such school district for the maintenance and operation of such district high school, and all lawful existing contracts of such county high school shall be assumed by and become the contracts of such school districts. The terms of office of all trustees of such county high school shall cease and terminate at the time the existence of said abandoned and abolished county shall cease and terminate.

All moneys in all county high school funds shall be transferred and paid over to the treasurer of the county to which the territory in which the school district succeeding to the property of the county high school is attached and made a part, and used and applied as follows:

Any moneys in any bond sinking and interest funds shall be used for the payment [of] and interest on any unpaid and outstanding high school bonds; if there shall be outstanding any high school warrants at the time such county high school ceases to exist, then all moneys in such county high school funds, except sinking

and interest funds, shall be used for the payment of such warrants, with interest thereon; if there be no such high school warrants outstanding then the moneys in such funds shall be transferred to the high school fund of the school district which, under the provisions of this act is to maintain such high school as a district high school, and if such moneys are insufficient to pay all outstanding warrants with the interest thereon then such warrant indebtedness shall be assumed by and become warrant indebtedness of such school district.

All taxes levied for any sinking and interest fund for county high school bonds and remaining unpaid at the time the abandoned and abolished county ceases to exist, when collected, shall be deposited to the credit of such fund; and all taxes levied for high school purposes and remaining unpaid when such county ceases to exist, and all other moneys which would have gone to such high school if the county had not been abandoned and abolished, when collected shall be deposited to the proper high school funds of the district in the county to which the territory of the abandoned and abolished county has been attached and made a part. [L. '37, Ch. 105, § 23. Approved and in effect March 15, 1937.]

Section 24 repeals conflicting laws.

CHAPTER 343

GENERAL POWERS AND LIMITATIONS UPON COUNTIES

4444. Enumeration of powers.

1936. County held jointly liable with city for injury to motorist through negligence of truck driver while working on joint project for road grading and waste ditch construction, since they were acting in proprietary capacity. *Johnson v. City of Billings*, 101 Mont. 462, 54 P. (2d) 579.

CHAPTER 344

COUNTY COMMISSIONERS — ORGANIZATION, MEETINGS, AND COMPENSATION

Section

4464. Compensation of members of board.

4464. Compensation of members of board. Each member of the board of county commissioners is entitled to eight dollars per day for each day's attendance on the sessions of the board, and seven cents per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence, and no other compensation must be allowed. [L. '39, Ch. 176, § 1, amending R. C. M. 1935, § 4464. Approved and in effect March 17, 1939.]

Section 2 repeals conflicting laws.

1938. ✓ This section was made applicable to county commissioners when sitting as the county welfare board, by section 349A.9(b). State ex rel. Broadwater County v. Potter et al., 107 Mont. 284, 84 P. (2d) 796.

CHAPTER 345

GENERAL POWERS OF BOARDS OF COUNTY COMMISSIONERS

Section

4465.3a. Highway equipment—commissioners may loan road machinery to cities or towns.

4465.9a. Prior sales—validation—school property.

4465.27. Lease of county property—revenue therefrom—disposition—lease subject to sale—terms.

4465.27-1. Repeals—suspensions.

4466. Sales of county lands and deeds in fee simple—validation.

4465.3a. Highway equipment — commissioners may loan road machinery to cities or towns. The board of county commissioners of any county may, in their discretion, authorize and permit the use of any county highway or road machinery or equipment, when not in use in any rural district, in connection with the construction, repair and maintenance of streets, avenues and alleys within any incorporated city or town of four thousand population or less located in such county. [L. '39, Ch. 157, § 1. Approved and in effect March 11, 1939.

Section 2 repeals conflicting laws.

4465.4. Poor and indigent persons.

1939. ✓ The county commissioners have the power to employ a manager for a county employment office to cooperate with the National Re-employment Service, the authority springs from the express power to care for the dependent poor. The cost thereof may be charged against the poor fund of the county. State ex rel. Barr v. District Court for Lake County et al., Mont., 91 P. (2d) 399.

4465.9. Sale of property.

1937. ✓ The county commissioners have the right, in their discretion, to install a tract index as a convenient, safe, and reliable means of procuring and having available the necessary information in the office of the county clerk to enable him to perform his duties with respect to tax deeds, since where a statute confers a power, but the mode of its exercise is not prescribed, any appropriate means of carrying it out may be adopted, and under sections 4465-4465.29, and they have the implied power to contract with an abstractor to furnish the requisite information to enable the county to give notices to the proper persons on application for tax deeds. Ranson v. Pingel, 104 Mont. 119, 65 P. (2d) 616.

4465.9a. Prior sales — validation — school property. That all sales of property heretofore made by the board of county commissioners of any county, the title to which was at the time of such sale held by the county

for use by any high school or high schools of the county, where the provisions of section 4465.9, revised codes of Montana, 1935, have been complied with by such county commissioners, are hereby legalized and declared to be valid and binding sales, and all deeds, contracts, conveyances, bills of sale and other instruments of transfer, heretofore executed by any board of county commissioners, or by its chairman duly authorized by said board, for and on behalf of any county, transferring and conveying any such property so sold, are hereby legalized and declared to be valid and vesting the absolute title of the property so conveyed in the purchaser named in such conveyance or instrument of transfer. [L. '39, Ch. 55, § 1. Approved and in effect February 24, 1939.

Section 2 repeals conflicting laws.

4465.21. Representing and management of county property and business.

1938. ✓ Courts are without power to interfere with the board's discretionary action within the scope of its authority or the exercise of powers conferred by statute on the sole ground that its action is characterized by lack of wisdom or sound discretion. The reviewing power of the courts must be exercised with caution, and, unless fraudulent, or so arbitrary as to amount to a clear and manifest abuse of discretion, the board's action is final. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1938. ✓ The county board has the control of the county's property and the management of its business and concerns, and within the scope of its powers it is supreme if the course pursued is reasonably well adapted to the accomplishment of the end proposed. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1937. ✓ The county commissioners have the right, in their discretion, to install a tract index as a convenient, safe, and reliable means of procuring and having available the necessary information in the office of the county clerk to enable him to perform his duties with respect to tax deeds, since where a statute confers a power, but the mode of its exercise is not prescribed, any appropriate means of carrying it out may be adopted, and under sections 4465-4465.29, and they have the implied power to contract with an abstractor to furnish the requisite information to enable the county to give notices to the proper persons on application for tax deeds. Ranson v. Pingel, 104 Mont. 119, 65 P. (2d) 616.

4465.24. Necessary acts.

1937. ✓ The county commissioners have the right, in their discretion, to install a tract index as a convenient, safe, and reliable means of procuring and having available the necessary information in the office of the county clerk to enable him to perform his duties with respect to tax deeds, since where a statute confers a power, but the mode of its exercise is not prescribed, any appropriate means of carrying it out may be adopted, and under sections 4465-4465.29, and they have the implied power to contract with an abstractor to furnish the requisite information to enable the county to give notices to the proper persons on application for tax deeds. Ranson v. Pingel, 104 Mont. 119, 65 P. (2d) 616.

4465.27. Lease of county property — revenue therefrom — disposition — lease subject to sale — terms. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law; to lease and demise county property, however acquired, which is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. Such leases shall be in such manner and for such purposes as, in the judgment of the board, shall seem best suited to advance the public benefit and welfare, and all revenue derived therefrom, except as otherwise provided, shall be paid into the county treasury. On the tenth day of January and the tenth day of July in each year the county treasurers shall distribute such revenues to the several county and trust and agency funds on the basis of the tax levy for the preceding calendar year. All such property must be leased subject to sale by the board, and no lease shall be for a period to exceed three (3) years, save and except as to deposits of coal only or coal and the surface above the same, owned by any county or to which any county has heretofore or may hereafter acquire title by tax title, tax deed or otherwise, which lease or leases may be for a period of ten years and to run and continue as long thereafter as coal is being mined and extracted from the leased property in commercial quantities and that as to all such deposits of coal only or coal and surface the provisions of sections 2208.1 and 2235 of the revised codes of the state of Montana, A. D. 1935 and all other provisions of the laws of Montana relating to the sale by the county commissioners of a county of property owned by the county or acquired by tax title or otherwise shall be suspended during the time any such lease or leases of coal only or coal and surface made hereunder shall be in force and effect. [L. '37, Ch. 152, § 1, amending R. C. M. 1935, § 4465.27. Approved and in effect March 16, 1937.

Note. So much of this act as is in direct conflict with L. '39, Ch. 193, § 1 (§ 2208.1) is repealed. See § 2208.1a.

4465.27-1. Repeals — suspensions. That all acts and parts of acts in conflict herewith are hereby repealed or their provisions suspended as provided for by section 1 [4465.27] of this act. [L. '37, Ch. 152, § 2. Approved and in effect March 16, 1937.

4466. Sales of county lands and deeds in fee simple — validation. All sales heretofore made of real property owned in fee simple by any county in this state, by the board of county commissioners of any county, the validity of which may be in doubt or involved

by reason of the failure of the board of county commissioners to comply with the provisions of section 4465.9, are hereby legalized and declared to be valid and binding sales, and all deeds or conveyances heretofore executed by any board of county commissioners, or by its chairman duly authorized by said board, for and on behalf of any county, transferring and conveying any such property so sold, are hereby legalized and declared to be valid, and vesting the title of the property so conveyed in the purchaser named in such conveyance in fee simple. [L. '37, Ch. 45, § 1. Approved and in effect February 23, 1937.

CHAPTER 346

SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section	
4482.	Repealed.
4482.1.	Printing contracts—county commissioners—duty to contract—price limit.
4482.2.	Official publications and legal advertising—maximum rates—folio measurement—size of type—rule and figure work.
4482.3.	Envelopes.
4482.4.	Letterheads.
4482.5.	Legal blanks.
4482.6.	General office forms—original only.
4482.7.	General forms, receipts and requisitions in duplicate or more copies.
4482.8.	Real estate tax receipts in quintuple — delinquent receipts.
4482.9.	Assessment lists.
4482.10.	Printing corner card on envelopes.
4482.11.	Index cards.
4482.12.	Special ruled and printed forms.
4482.13.	Bound books.
4482.14.	Size 18x11½ record books only.
4482.15.	County and school warrants—county warrants—binding.
4482.16.	Election supplies and ballots—absent voter envelopes — certificates of election — precinct register sheets—covers for register — instructions to voters—list of electors—ballots.
4482.17.	Stock forms without county name—motor vehicle license register—justice dockets—report of justice fees—teachers' registers — school budget applications — budget record—school forms.
4482.18.	Paper stock—definitions.
4482.19.	Bids—by sections or entire act—supplies not covered by act—prices.
4482.20.	Contract to newspaper most suitable—bond and sureties—unsatisfactory work—prior contracts—period of contract—subletting —work to be done in state.
4482.21.	What prices include.
4482.22.	County fairs and expositions—printing for —applicability of act.
4482.23.	Violation of act—penalty.
4482.24.	Repeals.
4506-4513.2.	Repealed.

Section

- 4506.1. Noxious weeds control and extermination—definitions.
 (a) Noxious weeds.
 (b) Noxious weed seed.
 (c) Weed control and weed seed extermination districts.
 (d) Weed control and weed seed extermination district supervisors.
 (e) The board of county commissioners.
 4506.2. Same—growth of noxious weeds unlawful.
 4506.3. Same—quarantine against introduction of noxious weed seed and farm products conveying the same.
 4506.4. Same—quarantine against introduction of noxious weed seed from other states.
 4506.5. Same—creation of weed control and weed seed extermination districts.
 4506.6. Same—notice of hearing.
 4506.7. Same—hearing on petition.
 4506.8. Same—weed control and weed seed extermination districts within corporate limits of cities and towns.
 4506.9. Same—appointment of weed control and weed seed extermination supervisors—term of office—compensation.
 4506.10. Same—inspection of premises—notice to occupant—possession.
 4506.11. Same—destruction of weeds by supervisors if notice not observed—collection of cost.
 4506.12. Same—destruction of weeds mingled with crop.
 4506.13. Same—creation of noxious weed fund by county commissioners—expenditure thereof.
 4506.14. Same—furnishing of materials.
 4506.15. Same—county commissioners to control weeds and to exterminate weed seed on public highways and county owned lands in the district.
 4506.16. Same—commissioners shall determine cost of control and extermination and fix the amount to be paid from the noxious weed fund.
 4506.17. Same—cooperation with other programs.
 4506.18. Same—penalty for violation of act.
 4506.19. Same—repeals.
 4506.20. Same—partial invalidity saving clause.
 4520.2. Furnishing blanks to justice of peace—court rooms for same.

4482. Repealed. [L. '37, Ch. 118, § 24.
 See § 4482.24.

4482. Contract for county printing—duty of county commissioners—rates and prices—bond of printer—terms of contract.

1938. A newspaper is a publication, usually in sheet form, intended for general circulation and published regularly at short intervals, containing intelligence of current events and news of general interest. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1938. Where a newspaper first issued in the county more than a year before the awarding of a contract for county printing was made to it the presumption was that it continued to be so printed in accordance with the requirement of the statute in the absence of evidence to the contrary, the burden of proving the contrary being upon one so claiming. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1938. A newspaper having a circulation of over 300 subscribers in the county and reaching every community in the county held a newspaper of general circulation in State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1938. The size of the subscription list or of the paper itself does not affect its character as a newspaper of general circulation, but rather the diversity of its subscribers and whether it contains news of a general character and interest to the community, although the news be limited in amount, are the determining factors. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1938. The manner in which printing contracts shall be let is one of legislative or governmental policy, a question with which the court has nothing to do. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1938. The county commissioners are the sole judges in choosing the paper which shall be most suitable for performing the work of county printing, and, if the choice is characterized by lack of wisdom, it may not on that ground be set aside by the courts. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1938. Section 4605.1 has no application to the awarding of county printing contracts, which is governed by section 4482, which is substantially the same as the act of March 2, 1895, which became section 4233 of the political code of 1895, and which later was re-enacted with certain minor changes as chapter 118 of the laws of 1937, which re-enactment does not affect a case which arose prior to such enactment becoming effective, except that it indicates the legislative purpose and intent, so that ever since 1895 the law of this state has been that contracts for county printing shall be let to the newspaper which, in the judgment of the county commissioners, shall be most suitable for performing the work. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1938. In section 4605.1 the words "or supplies of any kind" were never meant by the legislature in any manner to affect the county printing law, under the rule ejusdem generis. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1938. Since, under section 4482, it was unnecessary that the county commissioners call for bids or award contracts for printing to, the lowest and best responsible bidder, evidence as to which newspaper in the county was the lowest bidder was inadmissible in a proceeding by the state against the board of county commissioners to mandamus the board to award a printing contract to the relator's newspaper. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1938. The fact that a newspaper had patent insides does not prevent its qualification as a paper of general circulation within the terms of the statute if it otherwise complied therewith. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1938. A newspaper consisting of two pages of news, printed in the county, and six patent insides, printed outside the county, was held qualified to receive a contract for state printing in State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1938. Writ of mandate denied to compel a board of county commissioners to reconvene and make a contract with the relator's newspaper for county printing where the board had in its discretion

awarded the contract to another paper, no impropriety in so doing being shown. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

4482.1. Printing contracts—county commissioners—duty to contract—price limit. It is hereby made the duty of the county commissioners of the several counties of the state of Montana to contract with some newspaper, printed and published at least once a week, and of general bona fide and paid circulation with second class mailing privilege, printed and published within the county, and having been printed and published continuously in such county at least twelve months immediately preceding the awarding of such contract, to do and perform all the printing for which said counties may be chargeable, including all legal advertising required by law to be made, blanks, blank books, election supplies, loose leaf forms, official publications, and all other printed forms required for the use of such counties at not more than the prices specified in sections 2 to 17 [4482.2-4482.17] inclusive of this act. [L. '37, Ch. 118, § 1. Approved March 15, 1937.]

4482.2. Official publications and legal advertising—maximum rates—folio measurement—size of type—rule and figure work. For every folio or fraction thereof, not more than one dollar and fifty cents shall be paid for the first insertion thereof, and not more than fifty cents per folio for each subsequent insertion thereof, required by law to be made. For rule and figure work, not more than two dollars per folio or fraction thereof, for the first insertion, and not more than fifty cents per folio for each subsequent insertion thereof, required by law to be made.

That for the purpose of establishing a basis of folio measurement, one standard newspaper column, when set in the following mentioned type size, shall constitute a folio: 12 lines of solid six point, or approximately one hundred words; fourteen lines of solid seven point, or approximately one hundred words; fifteen lines of solid eight point, or approximately one hundred words; seventeen lines of solid nine point, or approximately one hundred words; seventeen lines of solid ten point, or approximately one hundred words.

For the purpose of determining the different sizes of type hereinbefore mentioned, the following point system measurements as universally used by the graphic arts industries shall prevail: Computing seventy-two points to a linear column inch, there shall be twelve lines of solid six point; 10.285 lines of solid seven point; nine lines of solid eight point; eight lines of solid nine point; 7.2 lines of solid ten point to each column inch.

For rule and figure work the basis for determination of this style shall be not less than two justifications. [L. '37, Ch. 118, § 2. Approved March 15, 1937.]

4482.3. Envelopes.

	500	1000	Addl.
6¾ Bond	\$3.50	\$5.75	\$4.50
10 Bond	4.25	7.25	5.50
6¾ White Wove, 24 Sub....	3.00	5.00	4.00
10 White Wove, 28 Sub....	3.75	6.50	5.50
6¾ Manila, 20 Sub.....	2.50	4.00	3.00
10 Manila, 28 Sub.....	3.00	5.00	4.00
12 Manila, 28 Sub.....	4.00	6.25	5.75

[L. '37, Ch. 118, § 3. Approved March 15, 1937.]

4482.4. Letterheads.

	250	500	1000	Addl.
Size 7x8½ on 16 or 20 pound substance, white or colored paper.				
Grade 17	\$4.00	\$5.25	\$7.00	\$3.00
Grade 27	4.25	5.75	8.00	3.75
Size 8½x11 on 16 or 20 pound substance, white or colored paper.				
Grade 17	4.50	5.75	8.00	3.75
Grade 27	5.00	6.50	9.50	5.00

[L. '37, Ch. 118, § 4. Approved March 15, 1937.]

4482.5. Legal blanks.

	250	500	1000	Addl.
⅛ Sheet, 3½ x 8½, printed one side....	\$3.75	\$4.25	\$6.50	\$5.00
⅛ Sheet, 3½ x 8½, printed two sides..	5.50	6.50	9.50	6.00
¼ Sheet, 7 x 8½, printed one side....	4.75	5.75	8.50	6.00
¼ Sheet, 7 x 8½, printed two sides..	7.50	8.50	11.50	8.00
½ Sheet, 8½ x 14, printed one side....	8.75	10.25	14.00	8.50
½ Sheet, 8½ x 14, printed two sides..	12.00	13.50	20.00	10.00
Full Sheet, 8½ x 28, printed one side....	13.25	15.25	24.00	14.00
Full Sheet, 8½ x 28, printed two sides..	21.75	23.75	31.50	15.00
Full Sheet, 17 x 14, printed one side....	18.00	20.00	26.00	14.50
Full Sheet, 17 x 14, printed two sides..	28.00	30.00	38.00	15.00

The above prices are based on blank or marginal ruled stock, padded or loose. [L. '37, Ch. 118, § 5. Approved March 15, 1937.]

4482.6. General office forms — original only.

Printed one or two sides, padded or loose. Actual cost of paper per ream pound indicates the grade number listed herewith. Grade numbers cover either 13, 16 or 20 pound substance paper.

	250	500	1000	Addl. 1000
Size $4\frac{3}{8} \times 8\frac{1}{2}$.				
1 side, Grade 12.....	\$5.40	\$6.40	\$7.60	\$2.75
1 side, Grade 17.....	5.50	6.55	7.90	3.00
1 side, Grade 27.....	5.65	6.85	8.55	3.25
Same form other side add75	1.25	2.25	2.00
Different form other side add	2.25	2.75	3.50	2.00
Size $5\frac{1}{2} \times 8\frac{1}{2}$				
1 side, Grade 12.....	7.75	8.75	10.25	2.75
1 side, Grade 17.....	7.75	8.75	10.50	3.25
1 side, Grade 27.....	8.00	9.25	11.50	3.75
Different other side add	3.75	4.25	5.00	1.90
Size $6 \times 9\frac{1}{2}$ — $7\frac{1}{4} \times 8\frac{1}{2}$				
1 side, Grade 12.....	8.00	9.00	10.50	2.75
1 side, Grade 17.....	8.00	9.25	11.00	3.00
1 side, Grade 27.....	8.25	9.75	12.00	3.75
Different other side add	4.00	4.50	5.00	2.00
Size $8\frac{1}{2} \times 11$				
1 side, Grade 12.....	15.65	16.90	19.05	4.00
1 side, Grade 17.....	15.90	17.40	19.25	4.55
1 side, Grade 27.....	16.40	18.15	21.25	5.80
Different other side add	9.00	9.75	10.50	1.50
Size $8\frac{1}{2} \times 14$ or $9\frac{1}{2} \times 12$				
1 side, Grade 12.....	17.75	19.25	21.50	4.00
1 side, Grade 17.....	18.00	19.50	22.25	4.75
1 side, Grade 27.....	18.50	20.75	24.50	7.00
Different other side add	10.25	11.00	12.00	2.00
Size $11\frac{1}{4} \times 14$				
1 side, Grade 12.....	20.75	22.25	24.75	4.50
1 side, Grade 17.....	21.00	22.75	26.00	5.50
1 side, Grade 27.....	21.50	24.00	28.25	7.50
Different other side add	12.25	12.75	13.75	2.00
Size 12×19				
1 side, Grade 12.....	24.75	26.50	29.50	5.25
1 side, Grade 17.....	25.25	27.25	31.00	6.75
1 side, Grade 27.....	26.00	29.00	34.25	10.00
Different other side add	15.50	16.25	17.25	2.50

[L. '37, Ch. 118, § 6. Approved March 15, 1937.]

4482.7. General forms, receipts and requisitions in duplicate or more copies. Actual cost of paper per pound for both original and duplicate copies is indicated by the grade num-

bers listed herewith. Grade numbers cover either 13, 16 or 20 [pound] substance paper, perforated, gathered, numbered and padded.

	250	500	1000	Addl. 1000
Sizes $3\frac{1}{2} \times 8\frac{1}{2}$ or less				
1 side only				
Original and duplicate,				
Grade 30	\$5.90	\$7.20	\$9.55	\$4.15
Grade 35	5.90	7.30	9.65	4.25
Grade 40	6.00	7.40	9.95	4.50
Triplicate or more, and for each additional blank				
Grade 20	1.25	1.75	2.50	2.00
Bound 50 sets to book in tag or marbleboard cover	1.00	1.65	2.90	2.65
If original printed both sides add.....	3.25	3.75	4.50	1.50
If original and duplicate printed both sides, add	3.75	4.50	6.00	3.00
Sizes over $3\frac{1}{2} \times 8\frac{1}{2}$, but not over $5\frac{1}{2} \times 8\frac{1}{2}$, 1 side only				
Original and duplicate,				
Grade 30	8.00	9.75	13.00	5.50
Grade 35	8.00	9.75	13.25	5.75
Grade 40	8.25	10.00	13.50	6.00
For each additional blank add, blank add, grade				
20	1.50	2.50	4.00	2.75
Bound 50 sets to book in tag or marbleboard cover	1.00	1.65	2.90	2.65
If original printed both sides add.....	5.75	6.25	7.00	1.50
If original and duplicate printed both sides add	6.25	7.00	7.50	1.50
Sizes over $5\frac{1}{2} \times 8\frac{1}{2}$ but not over $8\frac{1}{2} \times 11$ 1 side only				
Original and duplicate,				
Grade 30	12.25	15.00	19.25	7.75
Grade 35	12.50	15.25	19.75	8.25
Grade 40	12.50	15.50	20.25	8.75
For each additional blank add, grade				
20	1.50	2.75	5.00	4.00
Bound 50 sets to book in tag or marbleboard cover	1.20	2.20	3.55	3.30
If original printed both sides add.....	9.00	9.75	10.50	1.50
Original and duplicate printed both sides	9.75	10.50	11.75	2.50

	500	1000	2000	3000	Addl. 1000
Motor vehicle delinquent tax receipt in quadruple. Perforated, gathered, numbered and bound in books of 50 sets complete ..	26.15	40.00	53.75	12.25	
Personal tax receipts in quadruple, gathered, numbered, perforated, bound in books of 50 sets complete, one or two color ink.	27.15	42.25	56.50	13.50	
[L. '37, Ch. 118, § 8. Approved March 15, 1937.					

4482.9. Assessment lists.

	1000	2000	3000	Addl. 1000
Size 8½ x 14 in duplicate, gathered, padded, perforated	\$53.75	\$75.50	\$97.00	\$20.77
If original only, padded	40.00	46.75	53.50	6.75
Bound in books of 50 or 75 sets add	4.50	6.90	9.30	2.40
Size 8¾ x 15 to 9½ x 16½ or 9½ x 17 in duplicate	61.25	86.00	110.25	22.63
If original only, padded	46.25	53.75	61.00	8.25
If bound in books of 50 or 75 sets add	5.75	9.35	12.95	3.60
Size 14 x 17 in duplicate	65.50	105.50	134.75	27.90
If bound in books of 50 or 75 sets add	6.70	11.00	15.00	4.00
Size 14x17, original only, padded	56.35	64.55	72.95	8.40
[L. '37, Ch. 118, § 9. Approved March 15, 1937.				

4482.10. Printing corner card on envelopes.
Imprinting corner card on government stamped envelopes and printing post cards, stock furnished.

	500	1000	2000	3000	Addl. 1000
Envelopes	\$2.00	\$3.00	\$5.00	\$7.00	\$2.00
Post cards, 1 side printed	2.75	3.50	5.00	6.50	1.50
Both sides printed	5.25	6.75	9.75	12.75	3.00
[L. '37, Ch. 118, § 10. Approved March 15, 1937.					

4482.11. Index cards. White or color, 3x5. Punching included. Printed.

	500	1000	2000	Addl. 1000
One side	\$ 6.50	\$ 8.25	\$11.50	\$ 3.00
Different form other side	11.25	13.50	17.50	4.00
Same form both sides	7.75	10.25	15.00	4.00
4 x 6 or 3½ x 5½. One side	7.75	9.75	13.25	3.50
Different form other side	13.25	15.75	20.25	5.00
Same form both sides	9.00	11.75	16.75	5.00
5 x 8. One side	9.75	12.75	18.00	5.00
Different form other side	16.75	20.75	27.50	7.00
Same form both sides	11.00	14.75	21.50	7.00
[L. '37, Ch. 118, § 11. Approved March 15, 1937.				

4482.12. Special ruled and printed forms.
Prices apply to both sides ruled different with deductions for ruling and printing the same both sides or ruled and printed one side only. Prices include punching for loose leaf holder with rings or posts and green edging of sheets. Numbering of guide lines printed along binding edge of sheet, add \$1.50 for each guide line.

8½x11 Total of 8 unit columns, both sides Extra unit columns 50 cents each.					Addl.
	250	500	1000		1000
Grade 25, 28 sub.....	\$16.50	\$19.50	\$25.50		\$11.25
Grade 25, 32 sub.....	17.00	24.25	27.25		12.25
Grade 50, 36 sub.....	19.50	24.00	34.50		18.25
Deduct if both sides alike	5.00	4.75	4.50		.25
Deduct if printed and ruled 1 side only	6.75	7.50	9.00		3.00

8½x14 Total of 10 unit columns, both sides Extra unit columns 50 cents each.					11x17 Total of 12 unit columns, both sides Extra unit columns 50 cents each.				
	250	500	1000	Addl. 1000		250	500	1000	Addl. 1000
Grade 25, 28 sub.....	\$19.75	\$23.50	\$30.50	\$12.75	Grade 25, 28 sub.....	\$25.50	\$31.25	\$41.50	\$17.75
Grade 25, 32 sub.....	20.00	24.00	32.05	13.75	Grade 25, 32 sub.....	26.00	32.25	43.00	19.25
Grade 50, 36 sub.....	23.00	29.00	40.75	21.25	Grade 50, 36 sub.....	30.00	40.00	59.00	27.50
Deduct if both sides ruled and printed alike	7.00	6.75	6.50	.25	Deduct if both sides ruled and printed alike	9.50	9.25	9.00	.50
Deduct if ruled and printed 1 side only	8.25	9.00	10.50	3.00	Deduct if ruled and printed 1 side only	11.75	13.50	16.50	4.00
9½x12 Total of 8 unit columns, both sides Extra unit columns 50 cents each.					12x9½ Total of 8 unit columns, both sides Extra unit columns 50 cents each.				
Grade 25, 28 sub.....	\$17.75	\$21.75	\$28.50	\$12.50	Grade 25, 28 sub.....	\$16.75	\$20.50	\$27.50	\$12.50
Grade 25, 32 sub.....	18.25	22.75	30.50	14.50	Grade 25, 32 sub.....	17.00	21.00	28.50	13.50
Grade 50, 36 sub.....	20.50	27.00	39.00	21.00	Grade 50, 36 sub.....	20.50	27.50	37.00	20.75
Deduct if both sides ruled and printed alike	5.25	5.00	4.75	.25	Deduct if both sides ruled and printed alike	5.00	4.75	4.50	.25
Deduct if ruled and printed 1 side only	7.00	7.75	9.25	2.50	Deduct if ruled and printed 1 side only	7.00	7.75	9.25	2.50
9½x24 Total of 16 unit columns, both sides Extra unit columns 50 cents each.					12x19 Total of 14 unit columns, both sides Extra unit columns 50 cents each.				
Grade 25, 28 sub.....	\$35.50	\$41.25	\$52.50	\$21.00	Grade 25, 28 sub.....	\$28.50	\$34.75	\$46.50	\$20.00
Grade 25, 32 sub.....	36.00	42.25	54.50	23.00	Grade 25, 32 sub.....	29.00	35.75	48.50	22.00
Grade 50, 36 sub.....	41.00	51.75	72.50	37.50	Grade 50, 36 sub.....	34.00	45.50	67.50	39.00
Deduct if both sides ruled and printed alike	11.50	11.25	11.00	.50	Deduct if both sides ruled and printed alike	11.00	10.75	10.50	.25
Deduct if ruled and printed 1 side only	14.00	16.00	19.00	4.00	Deduct if ruled and printed 1 side only	13.25	15.00	18.00	4.00
10½x16 Total of 12 unit columns, both sides Extra unit columns 50 cents each.					12x23 Total of 16 unit columns, both sides Extra unit columns 50 cents each.				
Grade 25, 28 sub.....	\$23.00	\$28.50	\$38.25	\$17.00	Grade 25, 28 sub.....	\$36.75	\$43.00	\$56.00	\$18.50
Grade 25, 32 sub.....	23.25	29.25	39.50	18.25	Grade 25, 32 sub.....	37.25	44.00	58.25	20.75
Grade 50, 36 sub.....	27.25	37.00	54.00	32.00	Grade 50, 36 sub.....	43.00	55.00	80.00	43.50
Deduct if both sides ruled and printed alike	8.50	8.25	8.00	.50	Deduct if both sides ruled and printed alike	12.00	11.75	11.50	.50
Deduct if ruled and printed 1 side only	10.75	12.50	15.50	4.00	Deduct if ruled and printed 1 side only	14.50	16.50	19.50	4.00
11x14 Total of 10 unit columns, both sides Extra unit columns 50 cents each.					12x28 Total of 18 unit columns, both sides Extra unit columns 50 cents each.				
Grade 25, 28 sub.....	\$21.50	\$25.75	\$33.75	\$14.75	Grade 25, 28 sub.....	\$49.50	\$61.00	\$81.50	\$36.25
Grade 25, 32 sub.....	22.00	26.50	35.00	16.00	Grade 25, 32 sub.....	50.75	63.00	85.50	40.25
Grade 50, 36 sub.....	25.25	32.75	47.50	21.75	Grade 50, 36 sub.....	62.00	83.00	124.00	70.75
Deduct if both sides ruled and printed alike	7.00	6.75	6.50	.25	Deduct if both sides ruled and printed alike	15.20	15.00	14.50	.50
Deduct if ruled and printed 1 side only	8.25	9.00	10.50	2.50	Deduct if ruled and printed 1 side only	18.50	20.00	23.50	5.00

14x17 Total of 12 unit columns, both sides
Extra unit columns 50 cents each.

	250	500	1000	Addl. 1000
Grade 25, 28 sub.....	\$28.75	\$34.50	\$45.75	\$20.50
Grade 25, 32 sub.....	29.50	35.50	47.75	22.50
Grade 50, 36 sub.....	32.50	45.50	66.00	38.75
Deduct if both sides ruled and printed alike	10.00	9.75	9.50	.50
Deduct if ruled and printed 1 side only	11.50	12.50	14.50	3.50

14x22 Total of 14 unit columns, both sides
Extra unit columns 50 cents each.

Grade 25, 28 sub.....	\$40.00	\$48.25	\$63.50	\$27.00
Grade 25, 32 sub.....	40.75	49.50	66.00	29.50
Grade 50, 36 sub.....	48.00	62.50	91.00	49.75
Deduct if both sides ruled and printed alike	13.50	13.00	12.50	.50
Deduct if ruled and printed 1 side only	16.00	17.50	20.00	4.75

14x34 Total of 20 unit columns, both sides
Extra unit columns 50 cents each.

Grade 25, 28 sub.....	\$59.50	\$71.00	\$92.00	\$37.75
Grade 25, 32 sub.....	60.75	73.00	96.00	41.75
Grade 50, 36 sub.....	72.00	85.00	130.50	77.25
Deduct if both sides ruled and printed alike	19.50	19.00	18.00	1.25
Deduct if ruled and printed 1 side only	22.50	24.25	27.25	5.50

17x11 Total of 8 unit columns, both sides
Extra unit columns 50 cents each.

Grade 25, 28 sub.....	\$19.00	\$24.25	\$33.50	\$17.25
Grade 25, 32 sub.....	19.50	25.25	35.00	18.75
Grade 50, 36 sub.....	23.50	32.75	51.00	41.00
Deduct if both sides ruled and printed alike	5.50	5.25	5.00	.25
Deduct if ruled and printed 1 side only	6.50	7.50	9.50	3.50

17x14 Total of 10 unit columns, both sides
Extra unit columns 50 cents each.

Grade 25, 28 sub.....	\$24.75	\$30.50	\$41.75	\$20.00
Grade 25, 32 sub.....	25.25	31.50	43.75	22.00
Grade 50, 36 sub.....	31.00	41.50	65.00	35.25
Deduct if both sides ruled and printed alike	9.50	9.25	9.00	.25
Deduct if ruled and printed 1 side only	10.50	11.50	13.50	3.50

17x22 Total of 14 unit columns, both sides
Extra unit columns 50 cents each.

	250	500	1000	Addl. 1000
Grade 25, 28 sub.....	\$42.50	\$51.50	\$68.50	\$29.50
Grade 25, 32 sub.....	43.30	53.00	71.50	32.50
Grade 50, 36 sub.....	51.25	69.00	103.00	59.75
Deduct if both sides ruled and printed alike	15.00	14.50	14.00	.50
Deduct if ruled and printed 1 side only	15.50	16.75	19.00	4.50

17x28 Total of 18 unit columns, both sides
Extra unit columns 50 cents each.

Grade 25, 28 sub.....	\$51.50	\$63.00	\$83.50	\$37.25
Grade 25, 32 sub.....	52.75	65.00	87.50	41.25
Grade 50, 36 sub.....	54.00	75.00	126.00	70.75
Deduct if both sides ruled and printed alike	17.50	17.00	16.50	.50
Deduct if ruled and printed 1 side only	21.00	22.75	26.00	6.00

17x46 Total of 28 unit columns, both sides
Extra unit columns 50 cents each.

Grade 25, 28 sub.....	\$84.00	\$101.75	\$133.50	\$57.25
Grade 25, 32 sub.....	86.00	104.75	140.00	63.75
Grade 50, 36 sub.....	84.50	117.25	201.00	100.50
Deduct if both sides ruled and printed alike	29.50	28.75	28.00	.75
Deduct if ruled and printed 1 side only	35.50	38.00	42.50	8.50

18x11½ Total of 8 unit columns, both sides
Extra unit columns 50 cents each.

Grade 25, 28 sub.....	\$23.50	\$29.00	\$39.50	\$18.25
Grade 25, 32 sub.....	24.00	30.00	41.25	21.25
Grade 50, 36 sub.....	28.50	38.75	58.00	33.00
Deduct if both sides ruled and printed alike	9.00	8.75	8.50	.25
Deduct if ruled and printed 1 side only	10.00	10.75	13.00	3.50

18x23 Total of 16 unit columns, both sides
Extra unit columns 50 cents each.

Grade 25, 28 sub.....	\$46.25	\$57.00	\$76.50	\$33.00
Grade 25, 32 sub.....	47.00	58.00	79.50	36.00
Grade 50, 36 sub.....	56.50	75.00	113.25	57.50
Deduct if ruled and printed both sides alike	16.50	16.00	15.50	.50
Deduct if ruled and printed 1 side only	18.50	20.50	23.50	5.25

18x46 Total of 32 columns, both sides				
Extra unit columns 50 cents each.				
	250	500	1000	Addl. 1000
Grade 25, 28 sub.....	\$91.75	\$113.00	\$150.50	\$62.50
Grade 25, 32 sub.....	93.00	114.00	156.00	65.50
Grade 50, 36 sub.....	112.50	147.50	223.75	106.50
Deduct if both sides ruled and printed alike	31.50	30.50	29.50	1.00
Deduct if ruled and printed 1 side only	35.50	40.00	44.50	8.75

19x12 Total of 8 unit columns, both sides				
Extra unit columns 50 cents each.				
Grade 25, 28 sub.....	\$25.00	\$30.75	\$42.00	\$20.25
Grade 25, 32 sub.....	25.50	31.75	44.00	22.25
Grade 50, 36 sub.....	30.50	41.25	62.00	36.75
Deduct if both sides ruled and printed alike	9.25	9.00	8.75	.25
Deduct if ruled and printed 1 side only	10.25	11.00	13.25	3.50

19x24 Total of 16 unit columns, both sides				
Extra unit columns 50 cents each.				
Grade 25, 28 sub.....	\$49.50	\$61.50	\$81.75	\$36.25
Grade 25, 32 sub.....	50.25	63.00	84.75	39.25
Grade 50, 36 sub.....	61.00	81.75	122.25	64.00
Deduct if both sides ruled and printed alike	17.50	17.00	16.50	.50
Deduct if ruled and printed 1 side only	20.50	22.50	25.50	5.25

[L. '37, Ch. 118, § 12. Approved March 15, 1937.]

4482.13. Bound books. Bound books, ruled, printed and paged on 36 sub. No. 1 100% rag ledger. Patent back, flat opening. Complete, including lettering back or side title. The first dimension listed is the binding margin. When greater or intermediate lengths of sheets are furnished with a binding size as listed, the difference between two given lengths is added or subtracted in the correct proportion to either of the given lengths to cover the length of sheet actually furnished. When an intermediate binding size is furnished, the next larger binding size shall be used.

Size 10½x16—7 unit columns to page					
No. pages	300	400	500	560	640
¾ Russia, printed head	\$27.55	\$29.30	\$31.30	\$32.95	\$34.05
¾ Russia, printed page	30.95	32.70	34.65	36.35	37.65
Full Russia, printed head	31.85	34.25	36.90	39.10	40.80
Full Russia, printed page	35.20	37.65	40.30	42.50	44.15
Add for extra unit columns 50c each.					
Add for folio printed head \$5.50.					
Add for folio printed page \$11.25.					
Add for each printed guide line \$1.00.					
Add for A to Z index \$2.50.					

Size 11½x18—8 unit columns to page					
No. pages	300	400	500	560	640
¾ Russia, printed head	\$32.80	\$34.75	\$36.90	\$38.50	\$40.25
¾ Russia, printed page	40.00	41.95	44.10	45.70	47.45
Full Russia, printed head	37.10	39.70	42.50	44.60	46.75
Full Russia, printed page	44.30	46.90	49.70	51.80	53.95
Add for extra unit columns 50c each.					
Add for folio printed head \$6.50.					
Add for folio printed page \$13.00.					
Add for each printed guide line \$1.00.					
Add for A to Z index \$3.50.					

Size 12x19—8 unit columns to page					
No. pages	300	400	500	560	640
¾ Russia, printed head	\$35.65	\$37.85	\$40.30	\$41.65	\$43.75
¾ Russia, printed page	42.40	44.60	47.05	48.45	50.50
Full Russia, printed head	41.05	43.95	47.00	49.15	51.55
Full Russia, printed page	47.80	50.70	53.80	56.10	58.40
Add for extra unit columns 50c each.					
Add for folio printed head \$7.00.					
Add for folio printed page \$13.75.					
Add for each printed guide line \$1.00.					
Add for A to Z index \$3.50.					

Size 14x8½—5 unit columns to page

No. pages	300	400	500	560	640
¾ Russia, printed head	\$20.15	\$22.50	\$24.10	\$25.15	\$26.30
¾ Russia, printed page	26.10	27.45	29.05	29.10	31.25
Full Russia, printed head	24.10	25.90	27.90	29.35	20.80
Full Russia, printed page	29.05	30.85	32.85	34.30	35.75

Add for extra unit columns 50c each.

Add for folio printed head \$3.00.

Add for folio printed page \$8.00.

Add for each printed guide line \$1.00.

Add for A to Z index \$2.50.

Sibe 14x17—7 unit columns to page

No. pages	300	400	500	560	640
¾ Russia, printed head	\$36.25	\$38.70	\$41.65	\$42.80	\$45.60
¾ Russia, printed page	44.35	46.81	49.75	52.95	53.70
Full Russia, printed head	40.95	44.10	47.70	50.40	52.55
Full Russia, printed page	49.05	61.20	55.80	58.50	60.65

Add for extra unit columns 50c each.

Add for folio printed head \$6.50.

Add for folio printed page \$13.75.

Add for each printed guide line \$1.25.

Add for A to Z index \$3.50.

Size 14x20—8 unit columns to page

No. pages	300	400	500	560	640
¾ Russia, printed head	\$45.90	\$50.55	\$54.70	\$57.85	\$60.30
¾ Russia, printed page	48.45	53.10	57.75	60.15	63.90
Full Russia, printed head	48.80	54.55	57.70	59.85	62.30
Full Russia, printed page	53.60	57.30	61.45	64.60	67.05

Add for extra unit columns 50c each.

Add for folio printed head \$7.50.

Add for folio printed page \$16.50.

Add for each printed guide line \$1.25.

Add for A to Z index \$4.00.

Size 16x10½—5 unit columns to page

No. pages	300	400	500	560	640
¾ Russia, printed head	\$25.30	\$27.30	\$29.70	\$31.35	\$32.90
¾ Russia, printed page	32.05	34.05	36.45	38.10	39.90
Full Russia, printed head	32.95	35.60	38.70	40.85	43.05
Full Russia, printed page	36.35	38.90	42.10	44.20	46.35

Add for extra unit columns 50c each.

Add for folio printed head \$4.00.

Add for folio printed page \$10.25.

Add for each printed guide line \$1.25.

Add for each A to Z index \$3.50.

Size 16x21—8 unit columns to page

No. pages	300	400	500	560	640
¾ Russia, printed head	\$44.60	\$48.05	\$52.05	\$54.90	\$57.50
¾ Russia, printed page	53.10	56.60	60.55	63.50	66.05
Full Russia, printed head	50.40	54.60	59.20	62.45	65.85
Full Russia, printed page	59.00	63.15	67.75	71.00	74.40

Add for extra unit columns 50c each.

Add for folio printed head \$8.00.

Add for folio printed page \$18.00.

Add for each printed guide line \$1.25.

Add for A to Z index \$4.00.

Size 17x14—7 unit columns to page

No. pages	300	400	500	560	640
¾ Russia, printed head	\$32.85	\$35.35	\$38.25	\$40.65	\$42.45
¾ Russia, printed page	40.95	43.45	46.35	48.75	50.55
Full Russia, printed head	38.05	41.20	44.80	47.75	49.90
Full Russia, printed page	46.10	49.30	52.90	55.85	57.95

Add for extra unit columns 50c each.

Add for folio printed head \$5.50.

Add for folio printed page \$12.75.

Add for each printed guide line \$1.25.

Add for A to Z index \$3.50.

Size 17x28—8 unit columns to page

No. pages	300	400	500	560	640
$\frac{3}{4}$ Russia, printed head	\$52.05	\$56.85	\$62.10	\$65.60	\$69.90
$\frac{3}{4}$ Russia, printed page	63.75	69.30	73.80	78.20	81.60
Full Russia, printed head	61.95	67.85	74.25	79.50	83.60
Full Russia, printed page	73.65	79.55	85.95	90.80	95.10

Add for extra unit columns 50c each.

Add for folio printed head \$9.50.

Add for folio printed page \$20.00.

Add for each printed guide line \$1.25.

Add for A to Z index \$6.00.

Size 18x11 $\frac{1}{2}$ —5 unit columns to page

No. pages	300	400	500	560	640
$\frac{3}{4}$ Russia, printed head	\$29.65	\$31.60	\$34.00	\$36.05	\$37.45
$\frac{3}{4}$ Russia, printed page	37.75	39.70	42.10	44.15	45.55
Full Russia, printed head	33.95	36.55	39.48	42.30	43.55
Full Russia, printed page	42.05	44.65	47.70	50.30	52.10

Add for extra unit columns 50c each.

Add for folio printed head \$5.00.

Add for folio printed page \$12.00.

Add for each printed guide line \$1.25.

Add for A to Z index \$3.50.

Size 18x23—8 unit columns to page

No. pages	300	400	500	560	640
$\frac{3}{4}$ Russia, printed head	\$49.65	\$54.20	\$59.20	\$63.50	\$66.55
$\frac{3}{4}$ Russia, printed page	59.55	64.10	69.30	73.25	76.45
Full Russia, printed head	57.95	63.40	69.30	74.15	78.05
Full Russia, printed page	67.90	73.30	79.20	84.05	87.95

Add for extra unit columns 50c each.

Add for folio printed head \$9.00.

Add for folio printed page \$19.00.

Add for each printed guide line \$1.25.

Add for each A to Z index \$5.50.

Size 19x12—5 unit columns to page

No. pages	300	400	500	560	640
$\frac{3}{4}$ Russia, printed head	\$31.60	\$33.80	\$36.45	\$38.70	\$40.20
$\frac{3}{4}$ Russia, printed page	39.70	41.90	44.55	46.75	48.30
Full Russia, printed head	37.00	39.90	43.20	45.95	48.05
Full Russia, printed page	45.10	48.00	51.30	54.05	56.15

Add for extra unit columns 50c each.

Add for folio printed head \$5.50.

Add for folio printed page \$12.75.

Add for each printed guide line \$1.25.

Add for A to Z index \$3.50.

Size 19x24—8 unit columns to page

No. pages	300	400	500	560	640
$\frac{3}{4}$ Russia, printed head	\$52.05	\$57.85	\$62.10	\$66.50	\$69.90
$\frac{3}{4}$ Russia, printed page	63.75	68.30	73.80	78.20	81.60
Full Russia, printed head	61.95	67.85	74.25	79.10	83.60
Full Russia, printed page	73.65	78.80	85.95	90.80	95.30

Add for extra unit columns 50c each.

Add for folio printed head \$9.50.

Add for folio printed page \$20.00.

Add for each printed guide line \$1.25.

Add for A to Z index \$6.00.

[L. '37, Ch. 118, § 13. Approved March 15, 1937.]

4482.14. Size 18x11 $\frac{1}{2}$ record books only.
Bound or loose leaf style with binder.

No. pages	560	640
Marginal record ruled stock form grade 50, 36 sub. full Russia stock ruled not printed.....	\$31.50	\$33.40
Full Russia printed head.....	39.00	41.25
Full Russia printed page.....	46.15	48.75
Add for folio printed head \$1.50.		
Add for folio printed page \$12.00.		
Add for A to Z index \$3.50.		
Loose leaf record binders only, full Russia, letter with back title 7 or 8 quire capacity, each		\$26.50
Record ruled sheets, No. 1, 50 grade, 36 sub. ledged stock ruled marginal form, per M sheets		\$30.00

[L. '37, Ch. 118, § 14. Approved March 15, 1937.

4482.15. County and school warrants — county warrants — binding.

	250	500	1000	1000
Warrants with stub, size 4x14" on grade 27 bond or safety paper, either single or more on a sheet, numbered and bound in cardboard covers	\$ 7.25	\$ 9.25	\$13.00	\$ 7.00
School warrants in triplicate, size 4x9 $\frac{3}{8}$, grade 27, 16 sub. on original and grade 12, 16 sub. duplicate and triplicate. Duplicate and triplicate printed in black and red ink; original black only. Original and duplicate perforated. Bound 50 sets to book	\$12.65	\$16.60	\$23.15	\$10.55
			500	1000
			1000	1000

County warrants in duplicate or foldover style, three or more on a sheet, perforated, numbered, gathered and punched for loose leaf binder, grade 27 bond or safety paper

For binding warrants in duplicate or foldover style, check binding, 1 book of 1000 warrants

Half binding 1 book of 1000 warrants.....

[L. '37, Ch. 118, § 15. Approved March 15, 1937.

4482.16. Election supplies and ballots — absent voter envelopes—certificates of election —precinct register sheets—covers for register —instructions to voters—list of electors —ballots.

Tally books for primary or general election, each	\$ 1.25
Tally books for judicial candidates, primary elections, each.....	.50
Poll books (primary or general election, each	1.25

Envelopes for poll books, 10x15 inches, each25
Envelopes for tally sheets, 10x15 inches, each25
Envelopes for voted ballots, 15x18 inches, each45
Envelopes for unused ballots, 15x18 inches, each45
Envelopes for return of election books, 17x22 inches, each.....	.45
Envelopes for precinct registers, 17x22 inches, each.....	.45
Envelopes for election returns, 9 $\frac{1}{2}$ x4 $\frac{1}{8}$ inches, each.....	.10
Envelopes for absent voter send out or return 6 $\frac{1}{2}$ x9 $\frac{1}{2}$ or 6x9 inches	200 12.00
Additional	100 3.50
Envelopes for absent voter return ballots to judges of election, 10x15 inches, each.....	\$.25
Absent voter record sheets, size 11x21, foldover	100 6.50
Additional	100 4.50
Official seals 6 $\frac{1}{2}$ x5 inches, printed on gummed paper.....	250 3.50
[Additional]	500 5.75
Certificates of election, with stub, size 11x17, check bound.....	50 7.50
[Additional]	100 11.25
	1000 Addl. 1000
Precinct register sheets, 8 $\frac{1}{2}$ x14, special ruled and printed, both sides, punched, grade 17, 20 sub. bond paper.....	\$42.00 \$14.75
Precinct register sheets, 14x17, special ruled and printed, both sides, punched, grade 17, 20 sub. bond paper.....	60.25 17.75
Covers for precinct register, 8 $\frac{1}{2}$ x14, 125 tagboard, front and back cover printed and punched, per 30 sets.....	6.50
Each additional 10 sets.....	1.00
Covers for precinct register, 14x17, 125 tagboard, front and back cover printed and punched, per 30 sets.....	8.50
Each additional 10 sets.....	1.30
Instructions to voters, 14x22 on 100 lb. tagboard 100.....	20.00
Additional 100	5.00
List of electors 7c per name. This price includes printing up to 100 copies of each precinct list on grade 17, 20 lb. bond paper.	

Ballots		1000	Addl. 1000
Ballots primary election, complete, including numbering, perforating, assembling, rotating and stitching per party.....	\$45.00		\$35.00
Ballots for judicial candidates, complete, including numbering, perforating and rotating..	15.00		9.00
Ballots, initiative and referendum, constitutional amendment, complete, including perforating	10.00		6.00
Ballots general election, complete, including numbering and perforating	65.00		35.00
Where constitutional amendments, initiative and referendum measures appear on general election ballot.....	7.00		1.50
[L. '37, Ch. 118, § 16. Approved March 15, 1937.			

4482.17. Stock forms without county name — motor vehicle license register — justice dockets — report of justice fees — teachers' registers — school budget applications — budget record — school forms.

Budget form C B 2—per 100.....	\$ 5.25	
Budget form C B 3—per 100.....	5.25	
Budget form C B 4—per 100.....	5.25	
Budget form C B 5—per 100.....	6.75	
Budget form C B 6—per 100.....	6.75	
Budget form C B 7—per 100.....	9.00	
Motor vehicle license register sheets, size 11x14, ruled and printed one side, per 100.....	\$ 3.00	
Justice docket, size 320 page, each	18.00	
Report of justice fees received, size 14x17, ruled and printed one side, per 100.....	6.00	
Teachers' registers		
A. Monthly register, each.....	.35	
B. Six weeks register, each.....	.55	
C. Six weeks register, complete with report blanks and envelopes, each75	
District school budget applications, form 1.....	100	4.00
Additional	100	3.00
High school budget application sheets	100	5.00
Additional	100	4.00
District school budget record sheets, ruled and printed one side, size 13¾x21¾	100	4.50
Additional	100	4.00

		1000	Addl. 1000
School census reports.....	per 250		5.00
	per 500		9.00
Teachers' contracts	per 50		3.00
	per 100		4.50
Trustees' annual reports.....	per 50		5.00
	per 100		9.00
Teachers' reports	per 250		6.00
	per 500		9.75
Superintendent's or principal's reports	per 100		4.00
	Additional 100		3.50
[L. '37, Ch. 118, § 17. Approved March 15, 1937.			

4482.18. Paper stock—definitions. That for the purpose of defining the meaning of the word "substance", used in connection with paper stock mentioned herein, it is understood that all substance weights are to be computed on the basic size 17x22 inches; conforming to the uniform scale of sizes and weights as used by paper manufacturers. The words "grade number" relate to price per pound of paper in ream lots. [L. '37, Ch. 118, § 18. Approved March 15, 1937.

4482.19. Bids — by sections or entire act — supplies not covered by act — prices. Bids may be made either on the entire act, or bids may be made under each section. If each section is bid upon separately the section must be bid upon in its entirety and not upon individual items in such section.

All other blank books and printing not covered herein shall be furnished at prices not in excess of the prices for such work as set forth in the current Franklin printing catalog list. [L. '37, Ch. 118, § 19. Approved March 15, 1937.

4482.20. Contract to newspaper most suitable — bond and sureties — unsatisfactory work — prior contracts — period of contract — subletting — work to be done in state. The contract shall be let to the newspaper that in the judgment of the county commissioners shall be most suitable for performing said work, provided, that the county commissioners shall require of any contractor to do such county printing, a good and sufficient undertaking in such sum as said commissioners may deem advisable, signed by at least two sufficient sureties, conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this act and the terms of such contract; provided that nothing in this act shall be construed so as to compel the acceptance of unsatisfactory work; also provided,

however, that this requirement shall not affect any contract made prior to the passage of this act. Such contract for printing shall extend for a period of not more than two years. All newspapers which may receive any contract for printing under this act and which may not be able to execute any part of such contract shall be required to sublet such contract or portion of contract to some newspaper or printing establishment within the state, which shall do the work under the contract so sublet entirely within the state with Montana labor. [L. '37, Ch. 118, § 20. Approved March 15, 1937.]

4482.21. What prices include. All prices set forth herein include paper stock specified, all printing, and work complete and delivered at the court house. [L. '37, Ch. 118, § 21. Approved March 15, 1937.]

4482.22. County fairs and expositions—printing for—applicability of act. None of the provisions of this act shall apply to any printing or advertising that may be required in connection with the holding of county fairs and expositions. [L. '37, Ch. 118, § 22. Approved March 15, 1937.]

4482.23. Violation of act—penalty. That any violation of this act shall be deemed a misdemeanor and punished as such. [L. '37, Ch. 118, § 23. Approved March 15, 1937.]

4482.24. Repeals. That section 4482, revised codes of Montana 1935, and all acts and parts of acts in conflict herewith are hereby repealed. [L. '37, Ch. 118, § 24. Approved March 15, 1937.]

4506.4513.2. Repealed. [L. '39, Ch. 195, § 19. See § 4506.19.]

4506.1. Noxious weeds control and extermination—definitions. (a) **Noxious weeds.** The Canadian thistle (*cirsium arvense* (L.) Scop.), wild morning glory or bindweed (*convolvulus arvensis* L.) white top (*lepidium draba* L.), leafy spurge (*euphorbia virgata* Waldst. and Kit.), Russian knapweed (*centaurea pteris pallas.*), and such other weed or weeds as may be defined and designated as a noxious weed by the board of county commissioners of each county, is hereby declared to be a noxious weed and a common nuisance. Such noxious weeds are hereinafter referred to as “weeds.”

(b) **Noxious weed seed.** The seed of any noxious weed is hereby declared a common nuisance. Such noxious weed seed is hereinafter referred to as “seed” or “seeds.”

(c) **Weed control and weed seed extermination districts.** The area included within the

boundaries of any organized weed control and weed seed extermination district shall hereinafter be referred to as the “district.”

(d) **Weed control and weed seed extermination district supervisors.** The three persons appointed by the board of county commissioners to supervise the weed control and weed seed extermination within the county shall be referred to as the “supervisors”.

(e) **The board of county commissioners.** The board of county commissioners shall be referred to as the “commissioners.” [L. '39, Ch. 195, § 1. Approved and in effect March 17, 1939.]

4506.2. Same—growth of noxious weeds unlawful. It shall be unlawful to permit any noxious weed, as named in this act, or designated by the board of county commissioners of the respective county, to go to seed on any lands within the area of any district. This section shall apply to all persons, co-partnerships, corporations or companies owning, occupying or controlling lands, easements, or right-of-ways, as well as all county, state and federal owned and controlled highways, and also all drainage and irrigation ditches, spoil banks, barrow pits and right-of-ways for canals and laterals within the district. [L. '39, Ch. 195, § 2. Approved and in effect March 17, 1939.]

4506.3. Same—quarantine against introduction of noxious weed seed and farm products conveying the same. Whenever the supervisors have reason to believe that farm products, including seed, which will cause the spread of noxious weeds, are about to be introduced into the county, the said supervisors shall declare an embargo against the importation of such farm products and seeds into such county. [L. '39, Ch. 195, § 3. Approved and in effect March 17, 1939.]

4506.4. Same—quarantine against introduction of noxious weed seed from other states. Whenever the governor of the state has good reason to believe that shipments of grain, plants, seed, tubers, nursery stock or fruit containing noxious weed [weed] seed or plants dangerous or inimical to the horticultural or agricultural industries are about to be introduced into the state, he shall, by proclamation, declare an embargo against the importation or shipment of any such grain, plants, tubers, nursery stock, seed or fruit into the state except under such restrictions as he, after consulting the commissioner of agriculture, may deem proper. [L. '39, Ch. 195, § 4. Approved and in effect March 17, 1939.]

4506.5. Same — creation of weed control and weed seed extermination districts. When a petition signed by twenty-five per cent (25%) of the freeholders of any proposed district, outside of any incorporated town or city of the county, is presented to the commissioners of such county, asking for the creation of a weed control and weed seed extermination district, the commissioners shall set a day for a hearing of the same and order notice thereof to be given to all persons interested, as is hereinafter provided. Said petition shall set forth the boundaries of the district and the legal description of each piece of land within the same, together with the record owner thereof. [L. '39, Ch. 195, § 5. Approved and in effect March 17, 1939.

4506.6. Same — notice of hearing. Notice of such hearing shall be mailed, by registered letter, to each landowner within the proposed district, at his last known address. The address of the landowner as set forth in the conveyance by which he secured title, provided such conveyance contains his address, shall be deemed his last known address, unless by affidavit it shall appear that the landowner has another address. If no known address appears, service shall be deemed complete upon publication as hereinafter provided for. Such notice shall also be posted in three public places within the district and be published in the newspaper published nearest the district for two weekly issues, and such posting, mailing and first publication shall be at least ten (10) days before the date of hearing. [L. '39, Ch. 195, § 6. Approved and in effect March 17, 1939.

4506.7. Same — hearing on petition. At such a hearing, any landowner may file his written objections to the creation of the district. If landowners, owning fifty-one per cent (51%) of the agricultural land within the district, shall file written consent for the creation of the district, the commissioners shall proceed to hear the said petition, and if, in their judgment, the creation of the said district is desirable and for the best interest of all persons interested, they shall, by an order duly made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the land contained therein. [L. '39, Ch. 195, § 7. Approved and in effect March 17, 1939.

4506.8. Same — weed control and weed seed extermination districts within corporate limits of cities and towns. Twenty-five landowners within the incorporated limits of any city or town may present a like petition to the council of said city or town, and the said city or town council shall have authority to create weed

control and weed seed extermination districts within the city or town in like manner as herein provided for in the creation of weed control and weed seed extermination districts within the county. [L. '39, Ch. 195, § 8. Approved and in effect March 17, 1939.

4506.9. Same — appointment of weed control and weed seed extermination supervisors — term of office — compensation. The commissioners shall have authority to appoint a board of weed control and weed seed extermination supervisors, consisting of three members, who shall be appointed annually for each county in which a city, town, or county weed control and weed seed extermination district is created. Said supervisors shall be public officers, and they shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board. All such supervisors shall serve without pay, except such expenses for mileage and per diem as shall be fixed by the commissioners. The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation. It shall be the duties of said supervisors to supervise within the districts of their county the extermination or control program as promulgated by the commissioners. [L. '39, Ch. 195, § 9. Approved and in effect March 17, 1939.

4506.10. Same — inspection of premises — notice to occupant — possession. Where complaint has been made and the supervisors have reason to believe that noxious weeds described in this act are present upon the lands within their jurisdiction, in violation of the law, they shall forthwith inspect the premises, and if such weeds are found, they shall cause written notice to be served on the person permitting the same, directing him to comply with the provisions of this act, within a period of time specified in said notice. [L. '39, Ch. 195, § 10. Approved and in effect March 17, 1939.

4506.11. Same — destruction of weeds by supervisors if notice not observed — collection of cost. If the notice be not obeyed within the time specified in the notice, the supervisors shall forthwith destroy and exterminate such weeds and make report thereof to the county clerk, with a verified, itemized account of their services, and expenses in so doing, and a description of the lands involved, and shall include in said account the necessary cost and expense of chemicals, man hours of labor and equipment employed, at a rate paid, in the immediate vicinity, for farm labor per day and for equipment used for an eight hour day. Such expenses shall be paid by the county out of the "noxious weed fund", and unless the

sum, to be repaid by the owner or occupant, is not repaid before October 15th next ensuing, the county clerk shall certify the amount thereof, with the description of the premises to be charged, and shall extend the same to the assessment list of the said county, as a special tax on said land, but if the land for any reason be exempt from general taxation, the amount of such charge may be recovered by direct claim against the state or the county for state or county owned lands. When such taxes are collected, they shall be credited to the "noxious weed fund". In destroying and exterminating such weeds, the supervisors are authorized to take possession and control of any infested tract of land, within their districts, together with any fences or ditches thereon, and to move any fence or ditch where necessary in order to better conduct the control work and process of extermination as may be necessary. If any fence or ditch be moved, the same shall be replaced upon completion of the extermination work, if requested by the landowner. [L. '39, Ch. 195, § 11. Approved and in effect March 17, 1939.]

4506.12. Same — destruction of weeds mingled with crop. When noxious weeds are intermixed with a growing crop within the district, so that the field is a menace to the district, the supervisors shall have power to order the destruction of the same or such parts thereof as may be necessary. The supervisors may go upon the land infested with the noxious weeds for any purpose necessary to such enforcement, provided, however, that it shall be the duty of the supervisors to confer with the commissioners as a board of arbitration, who, when they deem it proper, may extend for one year the order for destruction of the crop containing the noxious weeds. [L. '39, Ch. 195, § 12. Approved and in effect March 17, 1939.]

4506.13. Same — creation of noxious weed fund by county commissioners — expenditure thereof. The board of county commissioners of any county in this state may create a noxious weed control and weed seed extermination fund, either by appropriating money from the general fund of the county, or at any time fixed by law for levy and assessment of taxes, levy a tax not exceeding one mill on the dollar of total taxable valuation in such county, the proceeds of which shall be used solely for the purpose of promoting the control of noxious weeds or extermination of weed seed in said county and shall be designated the "noxious weed fund". This fund shall be kept separate and distinct by the county treasurer, and shall be expended by the commissioners at such time, and such

manner, as is by said supervisors deemed best to secure the control and extermination of noxious weeds and weed seed. Warrants upon such fund may be drawn by the supervisors and countersigned by the commissioners. [L. '39, Ch. 195, § 13. Approved and in effect March 17, 1939.]

4506.14. Same — furnishing of materials. If any landowner desires to control the weeds and exterminate the weed seed on his own lands, in accordance with the notice of the supervisors, he may make application to the supervisors for the necessary chemicals, equipment and material necessary to enable him to control the weeds and exterminate the weed seed. Upon such application the supervisors shall certify the commissioners the amount of such chemicals, equipment and material as they deem necessary, and the commissioners shall thereupon cause to be furnished to such landowner such chemicals, equipment and material, and the same shall be charged against the said landowner and his land in the manner hereinafter provided and collected as is provided for in this act. Such chemicals and material shall be paid for out of the "noxious weed fund". [L. '39, Ch. 195, § 14. Approved and in effect March 17, 1939.]

4506.15. Same — county commissioners to control weeds and to exterminate weed seed on public highways and county owned lands in the district. It shall be the duty of the commissioners to control noxious weeds and exterminate noxious weed seed on the highways and county owned land within the confines of the district. The total cost of such control and extermination shall be paid from the "noxious weed fund". [L. '39, Ch. 195, § 15. Approved and in effect March 17, 1939.]

4506.16. Same — commissioners shall determine cost of control and extermination and fix the amount to be paid from the noxious weed fund. The commissioners shall determine and fix the cost of the control of noxious weeds and of extermination of noxious weed seed, whether the same be performed by the individual landowners or by the supervisors. In cases where the landowner controls the weeds and exterminates the weed seed, he shall present to the commissioners a duly verified claim for one-third of such cost, and when the same has been approved by the supervisors and commissioners it shall be paid to such landowner out of the "noxious weed fund". When the supervisors do the control and extermination provided for herein, one-third of the cost thereof shall be paid out of the "noxious weed fund", and the remaining two-thirds shall be charged against the land upon which weed control and extermination was had,

and such two-thirds shall be repaid or collected in the manner hereinbefore provided for. [L. '39, Ch. 195, § 16. Approved and in effect March 17, 1939.]

4506.17. Same — cooperation with other programs. The commissioners are empowered to cooperate with any state or federal aid program that becomes available. Under such a plan of cooperation the direction of the program shall be under the direct supervision of the commissioners of the county in which the program operates. Any financial aid received from the federal government in support of noxious weed control and noxious weed seed extermination shall be applied upon the landowner's part of the cost of control and extermination, or in case the landowner has paid his part of the cost, then his portion of such federal aid shall be paid to such landowner. [L. '39, Ch. 195, § 17. Approved and in effect March 17, 1939.]

4506.18. Same—penalty for violation of act. Any person who in any manner interferes with the weed control commissioners, weed supervisor or his deputies and employees in carrying out the provisions of this act, or refuses to obey an order of the supervisors, shall be guilty of a misdemeanor and upon conviction thereof, he shall be fined not to exceed a sum of one hundred dollars (\$100.00). All fines, bonds and penalties collected under the provisions of this act shall be paid to the county treasurer of each county, and by him placed to the credit of the fund to be known as the "noxious weed fund." [L. '39, Ch. 195, § 18. Approved and in effect March 17, 1939.]

4506.19. Same — repeals. Sections 4506, 4507, 4508, 4509, 4510, 4511, 4512, 4513, 4513.1, 4513.2, and all acts and parts of acts, in conflict herewith, are hereby repealed. [L. '39, Ch. 195, § 19. Approved and in effect March 17, 1939.]

4506.20. Same — partial invalidity saving clause. Should any section or clause of this act be found invalid, such decision shall only apply to the section or clause so found to be invalid, and shall not invalidate the entire act. [L. '39, Ch. 195, § 20. Approved and in effect March 17, 1939.]

4520.2. Furnishing blanks to justice of peace — court rooms for same. The several boards of county commissioners shall furnish at the expense of their respective counties to all qualified and acting justices of the peace all necessary justice dockets, all blanks or forms required by the justice of the peace in the handling of criminal cases. In townships having a population of 1500 or more, according

to the last previous United States census, the board of county commissioners may at their discretion, furnish such office quarters, furniture, fixtures and other supplies as they may deem necessary, provided, however, that the office quarters so furnished shall be located in the county court house, if possible. [L. '37, Ch. 75, § 1. Approved and in effect March 3, 1937.]

Section 2 repeals conflicting laws.

CHAPTER 347

CARE OF THE COUNTY POOR

Section

4536. Burial of deceased soldiers, sailors, and marines — burial supervisor — duties — maximum expense — death while absent from county of residence — burial by officers of public institutions.

4521. The board of county commissioners vested with control.

1938. ✓ Sections 4521 et seq., relating to the care of the poor, were not repealed by section 349A.1 et seq., and the former sections are still in force and effect and place the exclusive supervision of the poor in the hands of the county commissioners. State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305.

1938. ✓ "A casual comparison of chapter 82, [Laws of 1937, 349A.1 et seq.] with sections 4521 et seq. will demonstrate that at least some of the former are in conflict with the latter. We need not point out those conflicts; it is sufficient for the disposition of this case to point out that by chapter 82 the 'entire and exclusive superintendence of the poor' is no longer vested in the board of county commissioners as it was under section 4521." State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305.

1938. ✓ Since the enactment of L. '37, Ch. 82, §§ 349A, et seq., the entire and exclusive superintendence of the poor is no longer vested in the board of county commissioners as it formerly was under this section. "The burden of caring for the poor and needy has assumed such proportion that the state and federal governments now cooperate with the counties in these matters." State ex rel. Wilson v. Weir, 106 Mont. 526, 79 P. (2d) 305. To same effect see State ex rel. Broadwater County v. Potter et al., 107 Mont. 284, 84 P. (2d) 796.

1936. ✓ County commissioners have sole discretion in the conduct and control of the poor farm, acting, if necessary, through agents. Gagnon v. Jones, 103 Mont. 365, 62 P. (2d) 683.

1936. ✓ In action for injuries caused by superintendent of poor farm in handling of truck the presumption that his duties had been regularly performed in the usual course of business did not apply to him, as he was a county employee and not a public officer. Gagnon v. Jones, 103 Mont. 365, 62 P. (2d) 683.

4534. Poor-farm and workhouse.

1936. ✓ County commissioners have sole discretion in the conduct and control of the poor farm, acting, if necessary, through agents. Gagnon v. Jones, 103 Mont. 365, 62 P. (2d) 683.

1936. In action for injuries caused by superintendent of poor farm in handling of truck the presumption that his duties had been regularly performed in the usual course of business did not apply to him, as he was a county employee and not a public officer. *Gagnon v. Jones*, 103 Mont. 365, 62 P. (2d) 683.

4536. Burial of deceased soldiers, sailors, and marines — burial supervisor — duties — maximum expense — death while absent from county of residence — burial by officers of public institutions. It shall be the duty of the board of commissioners of each county in this state to designate some proper person in the county, who shall be known as veterans' burial supervisor, preferably an honorably discharged soldier, sailor or marine, whose duty it shall be to cause to be decently interred the body of any honorably discharged soldier, sailor, marine or nurse who shall have served in the army, navy, marine corps or army nurse corps of the United States who may hereafter die. Such burial shall not be made in any burial grounds or cemetery, or in any portion of any burial grounds or cemetery, used exclusively for the burial of pauper dead; provided, (1) the expense of burial shall be the sum of one hundred fifty dollars (\$150.00), to be paid by the county commissioners of the county in which the deceased was an actual bona fide resident at the time of death, and provided (2) that the benefits hereof shall not be available in the case of any decedent whose executor, administrator or heirs waive the benefits hereof.

In the event any honorably discharged soldier, sailor, marine or nurse, who shall have served in the army or navy of the United States, and who is a resident of the state of Montana, shall die while temporarily absent from the state or county of his residence, then the provisions of this act shall apply, and the burial expenses not exceeding the amount herein specified shall be paid in the same manner as above provided, and the veterans' burial supervisor may take charge of said burial in the same manner as he would, had such deceased person died within the county of his residence.

Whenever any soldier, sailor, marine, nurse or inmate hereinbefore described shall die at any public institution of the state of Montana, other than the state soldiers' home, and burial for any cause shall not be made in the county of the former residence of the deceased, the officers of said state institution, as aforesaid, shall provide the proper burial herein prescribed except that the expense of each burial shall not exceed the sum herein allowed, which expense shall be paid by the county in which the decedent resided at the time of entry into such institution, but no such burial shall

be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed, to the disparagement of proper interment. [L. '39, Ch. 52, § 1, amending R. C. M. 1935, § 4536, as amended by L. '37, Ch. 163, § 1. Approved and in effect February 24, 1939.

Section 2 repeals conflicting laws.

CHAPTER 350A

VETERANS' MEMORIAL FUND COMMISSION

Section

- 4562.4 Commission created — members — appointment — terms — organization — chairman — seal — Rules — quorum — compensation.
- 4562.5. Powers of commission—control of fund—expenditures.
- 4562.6. Duties and powers of commission—veterans' memorial building — construction — donations.
- 4562.7. Rules and regulations—care and management of memorial building.
- 4562.8. Veterans' claims—approval by commission —warrants.

4562.4. Commission created — members — appointment — terms — organization — chairman — seal — rules — quorum — compensation. There is hereby created a veterans' memorial fund commission consisting of five (5) persons to be appointed by the governor. One (1) shall be appointed from a list of five (5) names submitted by the United Spanish War Veterans, of Montana. One (1) shall be appointed from a list of five (5) names submitted by the Veterans of Foreign Wars, of Montana. One (1) shall be appointed from a list of five (5) names submitted by the American Legion, of Montana. One (1) shall be appointed from a list of five (5) names submitted by the Disabled American Veterans, of Montana. The fifth shall be appointed from a list of four (4) names submitted by the other four (4) members of the commission. One (1) of said persons shall be appointed for a period of one (1) year from and after the first day of May, 1939, and one (1) for a period of two (2) years from and after the first day of May, 1939, and one (1) for a period of three (3) years from and after the first day of May, 1939, and one (1) for a period of four (4) years from and after the first day of May, 1939, and the fifth member appointed from the list of names submitted by the other four (4) commissioners shall serve for one (1) year from and after the first day of May, 1939. The successors to the commissioners appointed from lists submitted by the United Spanish War Veterans, of Montana, Veterans of

Foreign Wars, of Montana, American Legion, of Montana, and Disabled American Veterans, of Montana, shall be appointed for terms of four (4) years and shall be appointed from a list of five (5) names submitted by the organization represented by the appointee whose term is to expire. The successor to the fifth member appointed from a list of four (4) names submitted by the other four (4) commissioners shall be appointed annually from a list of four (4) names submitted by the other four (4) commissioners. The members of the commission shall at their first meeting after their appointment and on or before the first day of June of each year thereafter elect one (1) of their number chairman of the commission, shall adopt a seal for the commission, and make such rules for the administration of their office not inconsistent with this act as they may deem expedient, and they may thereafter amend or abrogate such rules. Three (3) of the members of the commission shall constitute a quorum to do business, and the concurrence of at least three (3) members of the commission shall be necessary to render a choice or decision by the commission. Each member of said commission shall receive as compensation for services the sum of eight (\$8.00) dollars per diem and actual travel expenses while engaged in work authorized by the commission. The veterans' memorial fund commission shall hereinafter be referred to as the commission. [L. '39, Ch. 131, § 1. Approved and in effect March 9, 1939.]

4562.5. Powers of commission — control of fund — expenditures. The veterans' memorial fund heretofore created shall be placed under the exclusive control and jurisdiction of said commission which is empowered to expend said fund and the accruals thereto for the construction and maintenance of a veterans' memorial building, and the necessary expenses of the commission. [L. '39, Ch. 131, § 2. Approved and in effect March 9, 1939.]

4562.6. Duties and powers of commission — veterans' memorial building — construction — donations. It shall be the duty of the commission to have constructed as soon as said commission deems feasible, a veterans' memorial building on state owned land adjacent to the state capitol at Helena, Montana, and plainly identify said building as the "veterans' memorial building". The commission is by this act empowered to enter into agreements, contracts, or arrangements for the purpose of securing aid from an agency or agencies of the United States, and secure plans and estimates, and let contracts for the construction of the veterans' memorial building. The commission is empowered to receive and accept

gifts, devises and bequests which will in no manner affect the identity of the veterans' memorial building. [L. '39, Ch. 131, § 3. Approved and in effect March 9, 1939.]

4562.7. Rules and regulations — care and management of memorial building. Said commission may in writing adopt rules and regulations not inconsistent with this act for the care and management of the veterans' memorial building. [L. '39, Ch. 131, § 4. Approved and in effect March 9, 1939.]

4562.8. Veterans' claims — approval by commission — warrants. Warrants shall be drawn on the veterans' memorial fund in payment of claims approved by the veterans' memorial fund commission. [L. '39, Ch. 131, § 5. Approved and in effect March 9, 1939.]

Section 6 of the act is partial invalidity saving clause.

Section 7 repeals conflicting laws.

CHAPTER 351A

JOINT COUNTY OR REGIONAL LIBRARIES

Section

- 4573.1 Establishment and maintenance—expenses—funds—custody—withdrawal of county—dissolution of library district.
- 4573.2. Government units maintaining libraries—participation—taxation—property of unit—retention or transfer.
- 4573.3. Board of trustees—personnel—terms—vacancies—salaries—expenses—removals.
- 4573.4. Appropriations—taxes—expenditures—audits.
- 4573.5. Taxation—limit—county commissioners.
- 4573.6. Librarian—qualifications—salary.

4573.1. Establishment and maintenance — expenses — funds — custody — withdrawal of county — dissolution of library district. Two (2) or more counties, by action of their boards of county commissioners, may join in establishing and maintaining a joint county or regional library under the terms of a contract to which all will agree. The expenses of the joint county or regional library shall be apportioned between or among the counties concerned on such a basis as shall be agreed upon in the contract. The treasurer of one of the counties, as shall be provided in the contract, shall have the custody of the funds of the joint county or regional library; and the treasurers of the other counties concerned shall transfer quarterly to him all moneys collected for the "free library fund" in their respective counties. If the board of county commissioners of any county decides to withdraw from a joint county or regional library con-

tract, the county shall be entitled to a division of property in the same proportions as expenses were shared. Any library district organized under the provisions hereof, may, by majority vote of the qualified voters present and voting at a legal meeting of either of the counties which comprise said district, dissolve its cooperative existence. [L. '39, Ch. 132, § 1. Approved March 9, 1939.]

4573.2. Government units maintaining libraries — participation — taxation — property of unit — retention or transfer. When a joint county or regional library shall have been established, the legislative body of any government unit therein that is maintaining a library may decide, with the concurrence of the board of trustees of its library, to participate in the joint county or regional library; after which, beginning with the next fiscal year of the county, the governmental unit shall participate in the joint county or regional library and its residents shall be entitled to the benefits of the joint county or regional library, and property within its boundaries shall be subject to taxation for joint county or regional library purposes. A governmental unit participating in the joint county or regional library may retain title to its own property, continue its own board of library trustees, and may levy its own taxes for library purposes; or, by a majority vote of the qualified electors, a governmental unit may transfer, conditionally or otherwise, the ownership and control of its library, with all or any part of its property, to another governmental unit which is providing or will provide free library service in the territory of the former, and the trustees or body making the transfer shall thereafter be relieved of responsibility pertaining to the property transferred. [L. '39, Ch. 132, § 2. Approved March 9, 1939.]

4573.3 Board of trustees — personnel — terms — vacancies — salaries — expenses — removals. In a joint county or regional library district the board of five trustees shall be appointed by the joint action of all the county commissioners in the district. The first appointments or elections shall be for terms of one (1), two (2), three (3), four (4), and five (5) years respectively, and thereafter a trustee shall be appointed or elected annually to serve for five (5) years. Vacancies shall be filled for unexpired terms as soon as possible in the manner in which members of the board are regularly chosen. A trustee shall not receive a salary or other compensation for services as trustee, but necessary expenses actually incurred shall be paid from the library fund. A library trustee may be

removed only by vote of the legislative body. [L. '39, Ch. 132, § 3. Approved March 9, 1939.]

4573.4. Appropriations — taxes — expenditures — audits. After a joint county or regional library shall have been established or library service contracted for, the legislative body of the governmental unit for which the library was established or the service engaged, shall appropriate money annually for the support of the library and so far as possible, the taxes levied and collected for this purpose shall be levied and collected within the territory to be served. The board of trustees shall have the exclusive control of expenditures from the fund subject to any examination of accounts required by the state and money shall be paid from the fund only upon vouchers of the board of trustees, without further audit. The board shall not make expenditures or incur indebtedness in any year in excess of the amount of money appropriated and available for library purposes. [L. '39, Ch. 132, § 4. Approved March 9, 1939.]

4573.5. Taxation — limit — county commissioners. The board of county commissioners of each county that has joined in the establishment of a joint county or regional library as provided for in this act shall annually levy a tax equivalent to the tax which may be levied for a county library as provided in section 4568, revised codes of Montana, 1935. [L. '39, Ch. 132, § 5. Approved March 9, 1939.]

4573.6. Librarian — qualifications — salary. The librarian of a joint county or regional library shall have the qualifications required by Montana law for county librarians and shall come under the same minimum salary regulation. [L. '39, Ch. 132, § 6. Approved March 9, 1939.]

Section 7 repeals conflicting laws.

CHAPTER 353

RURAL IMPROVEMENT DISTRICTS

Section

4585. Assessment of property—apportionment of costs—railroads.

4585. Assessment of property — apportionment of costs — railroads. To defray the cost of making any of the improvements provided for in this act, the board of county commissioners shall adopt the following method of assessment: The board of county commissioners shall assess the entire cost of such improvements against the entire district and each lot or parcel of land assessed in such

district to be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided, however, that the board of county commissioners in its discretion shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection out of any funds in its hands available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements herein provided for, between the corner lots and inside lots of any block, the board of county commissioners may, in the resolution creating any improvement district, provide that whenever any of the improvements herein provided for shall be along any side street or abutting upon the side of any corner lot or block, that the amount of the assessment against the property in said district to defray the cost of such improvements shall be so assessed that each square foot of the land embraced within any such corner lot shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear. Whenever any portion of the surface of a street is kept or used by any person, firm or corporation for railroad or for street railway purposes, the cost and expense of making such improvements between the rails and for one foot on each side thereof shall be paid by the person, firm or corporation owning such railroad, and where double tracks of railroads are laid, such person, firm or corporation shall pay the costs of making such improvement or improvements between such tracks and between all switches and spurs. [L. '39, Ch. 53, § 1, amending R. C. M. 1935, § 4584. Approved and in effect February 24, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 353A

MONTANA RURAL REHABILITATION CORPORATION

Section

- 4603.1. Corporation designated as state agency—powers—objects.
- 4603.2. Cooperation with corporation — other officers, boards, courts, and governing bodies of state—duty.
Act of 1937.
- 4603.3. Conveyance of corporate assets to United States — authorization — use and disposition thereof.
- 4603.4. Management of assets pending transfer.
- 4603.5. Ratification of actions of corporation.

4603.1. Corporation designated as state agency — powers — objects. That the Montana Rural Rehabilitation Corporation, a Montana corporation with principal offices at Helena, in the county of Lewis and Clark, state of Montana, is hereby recognized and designated as a public agency and instrumentality of the state within the power and limitations of its charter, for the purpose of assisting in the rehabilitation of individuals and families as self-sustaining human beings by enabling them to secure subsistence and employment necessary to reduce the burden of public relief of the needy and unemployed. [L. '35, senate joint resolution No. 8, page 537, approved and in effect March 14, 1935.]

4603.2. Cooperation with corporation—other officers, boards, courts, and governing bodies of state — duty. That the various officers, boards, courts, and governing bodies of the state now engaged in any way, in the relief of destitution and unemployment are hereby authorized to cooperate with the Montana Rural Rehabilitation Corporation for the purposes specified in section 1 [4603.1] hereof. [L. '35, senate joint resolution No. 8, page 537, approved and in effect March 14, 1935.]

Act of 1937. Whereas, the Montana Rural Rehabilitation Corporation was organized and has been operating for the purpose of carrying on a rural rehabilitation program in the state of Montana with funds resulting from grants made by the United States through the federal emergency relief administration; and

Whereas, by executive order No. 7027, issued April 30, 1935 by the president of the United States, under the emergency relief appropriation act of 1935, the resettlement administration of the United States was created and the functions of rural rehabilitation were transferred from the federal emergency relief administration to the resettlement administration; and

Whereas, by executive order No. 7530, issued December 31, 1936 by the president of the United States, the resettlement administration was transferred to the United States department of agriculture and is now being administered under the direction of the secretary of agriculture; and

Whereas, under the emergency relief appropriation acts of 1935 and 1936 federal funds cannot be made available either to the corporation or the state for carrying on the activities of the corporation and such funds are available only for direct expenditure by the United States department of agriculture resettlement administration; and

Whereas, it is desirable that all rural rehabilitation activities in Montana be co-ordinated and controlled and managed by the same organization; now, therefore,

Be is enacted by the legislative assembly of the state of Montana:

4603.3. Conveyance of corporate assets to United States—authorization—use and disposition thereof. That the Montana Rural Rehabilitation Corporation be and it is hereby authorized to bargain, sell, convey, transfer or assign to the United States of America any or all of its assets and property, whether real, personal or mixed, so that the administration of the assets and the expenditure of the funds of the said corporation may be co-ordinated with expenditures of the United States department of agriculture resettlement administration for relief and rural rehabilitation purposes in the state of Montana; provided, however, that the United States of America shall make provision out of the assets and property transferred pursuant to this section and the proceeds thereof for the liquidation and discharge of the liabilities, commitments and obligations of the corporation, and provided further that any funds transferred or any funds realized from any of the assets and property transferred shall be held in the treasury of the United States as a trust fund and that all of such assets and property shall be continuously available as a revolving fund for relief and rural rehabilitation purposes in the state of Montana; and provided further that when the federal government shall cease using these assets and property or the proceeds thereof for such purposes the remainder thereof, after the liquidation of any claims then existing against such assets and property, shall be retransferred to the corporation except that if the corporation shall not be in existence at such time or if the legislature of the state of Montana shall so designate the said remainder shall be turned over to the state treasurer of the state of Montana subject to appropriation by the legislative assembly to the general fund or for such public purposes as it may prescribe. [L. '37, Ch. 195, § 1. Approved and in effect March 18, 1937.

4603.4. Management of assets pending transfer. That, pending such transfer, the Montana Rural Rehabilitation Corporation be, and it is hereby, authorized to permit and empower the secretary of agriculture or the head of any other federal agency in which may hereafter be vested the function of carrying out rural rehabilitation activities in the state of Montana, exclusively to manage and direct the administration of its assets and the expenditure of its funds for the purpose set

forth above in such manner as the said secretary of agriculture or head of such other agency shall determine. [L. '37, Ch. 195, § 2. Approved and in effect March 18, 1937.

4603.5. Ratification of actions of corporation. That any action heretofore taken by the Montana Rural Rehabilitation Corporation to effect the purposes authorized by sections 1 and 2 [4603.3-4603.4] hereof be, and the same is, ratified and authorized. [L. '37, Ch. 195, § 3. Approved and in effect March 18, 1937.

Section 4 repeals conflicting laws.

CHAPTER 354

CLAIMS AGAINST COUNTIES—COUNTY WARRANTS

4605.1. Request for bids necessary in making purchases exceeding one thousand dollars.

1938.✓ In section 4605.1 the words "or supplies of any kind" were never meant by the legislature in any manner to affect the county printing law, under the rule ejusdem generis. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

1938.✓ Section 4605.1 has no application to the awarding of county printing contracts, which is governed by section 4482, which is substantially the same as the act of March 2, 1895, which became section 4233 of the political code of 1895, and which later was re-enacted with certain minor changes as chapter 118 of the laws of 1937, which re-enactment does not affect a case which arose prior to such enactment becoming effective, except that it indicates the legislative purpose and intent, so that ever since 1895 the law of this state has been that contracts for county printing shall be let to the newspaper which, in the judgment of the county commissioners, shall be most suitable for performing the work. State ex rel. Bowler v. Board of County Com'rs, 106 Mont. 251, 76 P. (2d) 648.

CHAPTER 355

COUNTY BUDGET SYSTEM

Section

4613.4. Hearings on budget—adoption—time—fixing amount due to separate funds—budget items—anticipation of nonpayment—item appropriations—limitations—county poor fund—expenditures—limitation—fixing amount to be raised—amount of levy—reserve—total levy—limitation—what budget shall show—basis for rate—copy to state examiner—failure to send—penalty.

4613.1. County budget—estimates by county officers of revenues and expenditures—form of estimates—penalty for failure to file.

1938.✓ The board of county commissioners, in preparing its budget and making its levy, must take into consideration the amount of money already

available in each fund for which a levy is made. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938. ✓ There is neither express or implied authority on the part of the county board to levy taxes to raise funds with which to buy county bonds before they mature. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938. ✓ County commissioners have only such authority with reference to tax matters as the legislature sees fit to give them. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938. ✓ This section declares the policy in Montana to be in favor of levying taxes as needed. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

4613.2. Tabulation by clerk of expenditures program—classifications—items included in.

1938. ✓ There is neither express or implied authority in the county board to levy taxes to raise funds with which to buy county bonds before they mature. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938. ✓ This section declares the policy in Montana to be in favor of levying taxes as needed. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938. ✓ The board of county commissioners, in preparing its budget and making its levy, must take into consideration the amount of money already available in each fund for which a levy is made. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938. ✓ County commissioners have only such authority with reference to tax matters as the legislature sees fit to give them. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

4613.3. Consideration of budget by commissioners—notice of budget meeting.

1938. ✓ Where the county board notified taxpayers to appear at a hearing of the board on the question of the levy of a tax to buy up bonds before they had matured, and when there was enough money in the county treasury to pay all lawful obligations of the county, since the tax was illegal, rather than excessive, a taxpayer who did not appear was not estopped to enjoin the collection of the tax so levied. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

4613.4. Hearings on budget—adoption—time—fixing amount due to separate funds—budget items—anticipation of nonpayment—item appropriations—limitations—county poor fund—expenditures—limitation—fixing amount to be raised—amount of levy—reserve—total levy—limitation—what budget shall show—basis for rate—copy to state examiner—failure to send—penalty. On the Wednesday immediately preceding the second Monday in August the county commissioners shall meet at the time and place designated in the notice provided for in section 4613.3, at which time any taxpayer may appear and be heard for or against any part of such budget. Such hearing shall be continued from day to day and shall be concluded and terminated and the budget finally approved and adopted on the second Monday in August and before the fixing of the tax levies by such board.

Upon the conclusion of such hearing the board shall first determine and fix the amount which it is estimated will accrue to each fund during the fiscal year from all sources, except the taxation of property, but in so doing the board shall not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during any preceding fiscal year, or years. The board shall then determine and fix separately the amount appropriated for and authorized to be expended for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for the expenditures so authorized; provided that there shall not be added to the amount to be appropriated and authorized to be expended for any item, or to the total amount appropriated and authorized to be expended from any fund any amount or percentage whatever because of any anticipated loss of revenue by reason of the nonpayment of taxes levied for such fiscal year; and provided further that the amount appropriated and authorized to be expended for any item contained in such budget, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants and interest thereof, must not exceed by more than ten per centum (10%) the amount actually expended for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emergency warrants and interest thereon, shall not exceed by more than ten per centum (10%) the total amount actually expended for all purposes, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants, from such fund under the appropriation made from such fund in the budget approved and adopted for the fiscal year immediately preceding; provided further that the foregoing limitations shall not apply to appropriations and expenditures authorized to be made from the county poor fund for payment of bonds and emergency warrants and interest thereon; and provided further that the total expenditures authorized to be made from any fund, including reserve added thereto as hereinafter provided, shall not, in any event, exceed the aggregate of the cash balance in such fund at the close of the fiscal year immediately preceding, the amount of estimated revenues to accrue to such fund, as determined and fixed in the manner herein provided, and the amount which may be raised for such fund by a lawful tax levy during the fiscal year.

The board shall then determine and fix the amount to be raised for each fund by tax levy by adding together the cash balance in the fund at the close of the fiscal year immediately preceding and the amount of the estimated revenues, if any to accrue thereto during the current fiscal year, as before ascertained and determined, and then deducting the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined and fixed by said board, the amount remaining being the amount necessary to be raised for the fund by tax levy during the current fiscal year; provided that the board may add to the amount so found necessary to be raised for any fund by tax levy during the current fiscal year, an additional amount as a reserve to meet and care for expenditures to be made from such fund during the months of July to November, inclusive, of the next ensuing fiscal year under the annual budget to be thereafter adopted for such next ensuing fiscal year, but the amount which may be so added to any fund, as such reserve for such purpose, shall not exceed one-third of the total amount appropriated and authorized to be expended from such fund during the current fiscal year, after deducting from the amount of such appropriations and authorized expenditures the total amount, if any, therein appropriated and authorized to be expended for election expenses and payment of emergency warrants; provided further that the total amount, to be raised by tax levy for any fund, during such current fiscal year, including the amount of such reserve and any amount for payment of election expenses and emergency warrants, must not exceed the total amount which may be raised for such fund by a tax levy which does not exceed the maximum levy permitted by law to be made for such fund.

The budget as finally determined, in addition to setting out separately each item for which any appropriation or expenditure is authorized and the fund out of which the same is to be paid, shall set out the total amount appropriated and authorized to be expended from each fund, the cash balance in the fund at the close of the last preceding fiscal year, the amount, if any, which it is estimated will accrue to the fund from sources other than taxation, the reserve, if any, for the next ensuing fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The board shall then by resolution approve and adopt the budget as so finally determined and enter the same at length and in detail in the official minutes of the board.

On the second Monday in August, and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at such rate as will raise the amount set out in such budget as the amount necessary to be raised by tax levy for such fund during the current fiscal year, and no more; provided, that the taxable valuation of the county for the then current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on such basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy, and shall be made in the manner provided by section 2148.1, revised codes of Montana, 1935.

The county clerk and recorder shall, not later than the fifteenth day of September following, forward a full, complete, itemized and detailed copy of the final budget, together with the tax levies made therefor, to the state examiner. If any county clerk and recorder shall fail, refuse, or neglect to forward such copy of the budget to the state examiner within such time, the state examiner shall, before the first day of October immediately following, notify the board of county commissioners of such county that such copy of budget has not been forwarded to him by the county clerk and recorder, and such board of county commissioners must thereupon withhold from said county clerk and recorder his salary for the month of September until such time as such county clerk and recorder shall file with such board a receipt from the state examiner showing the receipt by him of such copy. [L. '37, Ch. 98, § 1, amending R. C. M. 1935, § 4613.4. Approved and in effect March 12, 1937.

1938. ✓ Where the county board notified taxpayers to appear at a hearing of the board on the question of the levy of a tax to buy up bonds before they were matured, and when there was enough money in the county treasury to pay all lawful obligations of the county, since the tax was illegal, rather than excessive, a taxpayer who did not appear was not estopped to enjoin the collection of the tax so levied. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938. ✓ County commissioners have only such authority with reference to tax matters as the legislature sees fit to give them. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938. ✓ There is neither express or implied authority in the county board to levy taxes to raise funds with which to buy county bonds before they mature. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938. ✓ This section declares the policy in Montana to be in favor of levying taxes as needed. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938. ✓ The board of county commissioners, in preparing its budget and making its levy, must take into consideration the amount of money already available in each fund for which a levy is made. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

4613.6. Emergency expenditures — notice and hearings — objections by taxpayers — appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy —lapse of appropriations.

1939. The county commissioners have the power to employ a manager for a county employment office to cooperate with the National Re-employment Service, the authority springs from the express power to care for the dependent poor. The cost thereof may be charged against the poor fund of the county. *State ex rel. Barr v. District Court for Lake County et al.*, Mont. , 91 P. (2d) 399.

1938. ✓ Cited in *State ex rel. Silver Bow County v. Brandjord*, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589, enumerating the powers of the board of county commissioners with reference to the creation of an emergency budget.

1935. ✓ Mandate to the county commissioners to pay judgments on assessments on county for benefits to highways from drainage district, as "mandatory expenditures required by law," under section 4613.6, held improper where the chairman of the board and the county clerk were not joined as respondents, there being no money in the treasury to make the payment, since all the commissioners could do would be to issue warrants for payment. *State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County*, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Assessments against county for benefits to highways from drainage district are "mandatory expenditures required by law" under section 4613.6 of the budget law and are required to be paid as therein provided. *State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County*, 100 Mont. 581, 51 P. (2d) 635.

CHAPTER 356

COUNTY FINANCES, BONDS, AND WARRANTS

Section

- 4622.1. Investment of sinking funds of counties, cities and towns—protection and keeping of securities.
- 4630.1. Board of county commissioners may issue bonds for certain purposes—acquiring land—public buildings—highways—indebtedness to another county—funding county warrants—refunding bonds—seed, grain, and relief warrants—judgments against county—resolution—agreements with holders of outstanding bonds.
- 4630.3. Limitation on amount of bonds—issuance in excess of limitation void—refunding bonds—value of taxable property—definition.
- 4630.4. Terms of bonds—powers to redeem—maximum interest—time required for payment—estimation—time of redemption.

Section

- 4630.6. Bonds which may be issued without holding an election—purposes—procedure—sale.
- 4630.6-1. Repeals—outstanding bonds—proceedings pending—validity.
- 4630.6-2. Floating indebtedness—funding bonds or taxation authorized—kinds of bonds—interest rate—special tax levy—disposition of proceeds.
- 4630.6-3. Same—same—procedure by county commissioners.
- 4630.12. Who are entitled to vote—lists of electors—county clerk to prepare.
- 4630.29. Redemption of bonds before maturity—money in excess of needs at next interest date—how applied—payment of bonds in numerical order.
- 4630.30. Investment of sinking and interest fund—paid bonds—marking as paid—cancelling coupons—county treasurer's duty entry on record of registration—delivery to county clerk—investment of funds when bonds cannot be purchased.

4622.1. Investment of sinking funds of counties, cities and towns—protection and keeping of securities. That the board of county commissioners of any county of the state of Montana, and the council or commission of any city or town of the state of Montana, shall have the power and authority and shall invest so much of the bond sinking funds of any such county, city or town, as is not needed for the payment of bonds or interest coupons, in United States Government bonds or securities, state bonds or securities, county, city or school district bonds or county or city warrants or other bonds or securities which are supported by general taxation, except irrigation district bonds, and special improvement district or maintenance district bonds or warrants, provided, however, that all such investments must first be approved by the state examiner, and that all such bonds or securities must be due and payable at least sixty (60) days before the obligations, for the payment of which the sinking fund was established, shall become due and payable; and provided further, that whenever any of the bonds, for which such sinking fund was established, are not yet due but are then redeemable under optional provisions thereof, such sinking funds shall not be subject to investment but shall be used and applied in payment and redemption of such bonds. The bonds and securities in which any such sinking funds are invested shall be kept in the custody of the county, city or town treasurer and held by him for the benefit of the county, city or town, as the case may be. It shall be the duty of such treasurer to properly protect such bonds and securities by insurance, the use of safety deposit boxes, or other means, the expense of which shall be a proper charge against the particular county, city or town. All moneys derived from interest on sinking fund invest-

ments as herein authorized, shall be credited by the treasurer of such county, city or town, to the sinking fund for which the investment was made. [L. '39, Ch. 37, § 1, amending R. C. M. 1935, § 4622.1. Approved and in effect February 17, 1939.

Section 2 repeals conflicting laws.

4630.1. Board of county commissioners may issue bonds for certain purposes — acquiring land — public buildings — highways — indebtedness to another county — funding county warrants — refunding bonds — seed, grain, and relief warrants — judgments against county — resolution — agreements with holders of outstanding bonds. The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate and sell coupon bonds on the credit of the county, as hereinafter in this act more specifically provided, for any of the following purposes:

Subdivision (a). For the purpose of acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful authority to acquire or erect, control and maintain; for the purpose of acquiring land for any other public use or activity within the county, under its control and authorized by law.

Subdivision (b). For the purpose of constructing, erecting or acquiring by purchase necessary public buildings within the county, under its control and authorized by law, making additions to and repairing buildings and for the purpose of furnishing and equipping the same.

Subdivision (c). For the purpose of acquiring rights of way for and constructing public highways and bridges, or either of them.

Subdivision (d). For the purpose of enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line.

Subdivision (e). For the purpose of funding, paying and retiring outstanding county warrants lawfully issued against the county general fund, road fund, bridge fund or poor fund, when there is not sufficient money in the fund against which such warrants are drawn to pay and retire such warrants and the levying of taxes sufficient to pay and retire such warrants within a period of three (3) years would, in the judgment of the board of county commissioners, work a hardship and be an undue burden upon the taxpayers of the county.

Subdivision (f). For the purpose of refunding, paying and redeeming optional, redeemable or maturing bonds when there are not sufficient funds available to pay such bonds and it is deemed for the best interests of the county to refund such bonds.

Subdivision (g). For the purpose of funding, paying and retiring outstanding seed grain warrants lawfully issued under the provisions of section 4651, and for the purpose of funding, paying and retiring outstanding special relief warrants lawfully issued under the provisions of section 4692, when there is not sufficient money available to pay such warrants and the levying of special taxes sufficient to pay the same within a period of three (3) years would, in the judgment of the board of county commissioners, work a hardship and be an undue burden upon the taxpayers of the county.

Subdivision (h). For the purpose of funding, paying in full or compromising, settling and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, when there are not sufficient funds available to pay such judgment and when sufficient money cannot be raised to satisfy such judgment by an annual tax levy of ten (10) mills levied on all the taxable property within the county through a period of three (3) years.

The resolution providing for the issue of such bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement which may have been entered into between the board of county commissioners and the judgment creditor.

Subdivision (i). Whenever the total indebtedness of a county exceeds the constitutional limitation of five per centum (5%) of the value of the taxable property therein and the board of county commissioners of said county finds and determines that the county is unable to pay and discharge such indebtedness in full, the said board of county commissioners shall have the power and authority to negotiate with the holders of the bonds of said county for an agreement or agreements whereby said bondholders agree to accept less than the full amount of such bonds and the accrued unpaid interest thereon in full payment and satisfaction thereof, to enter into such agreement or agreements and to issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series if the circumstances so require and each series may be either amortization bonds or serial bonds.

The plan agreed upon between the board of county commissioners and the bondholders shall be embodied in full in the resolution

providing for the issue of such bonds. [L. '37, Ch. 135, § 1, amending R. C. M. 1935, § 4630.1. Approved and in effect March 16, 1937.]

Note. Sections 4651 and 4692 of the revised codes of Montana of 1921 were repealed, respectively, by L. '35, Ch. 29, § 1, and L. '35, Ch. 22, § 1.

1939. Under the statute, the county commissioners are authorized to issue bonds on the credit of the county, for the purpose "of funding, paying and retiring outstanding warrants lawfully issued against the general fund, the road fund, or poor fund" etc. Bonds issued to fund road fund warrants do not impose upon the people of the county any new liability, in respect to the indebtedness already incurred. *State ex rel. Siegfried v. Carbon County et al.*, Mont., 92 P. (2d) 301.

4630.3. Limitation on amount of bonds — issuance in excess of limitation void — refunding bonds — value of taxable property — definition. No county shall issue bonds for any purpose which, with all outstanding bonds and warrants, except county high schools bonds and emergency bonds, will exceed two and one-half per centum ($2\frac{1}{2}\%$) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the issuance of such bonds; provided, however, that a county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per centum ($2\frac{1}{2}\%$), but will not exceed five per centum (5%) of the value of such taxable property, when necessary to do so for the purpose of replacing, rebuilding, or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident, or when necessary to do so for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes; provided, however, that this act shall not be construed to extend limitations on bonded indebtedness for county high school purposes, as fixed by section 1262.14, and acts amendatory thereof; and further provided, that the foregoing limitations shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932. All bonds issued by any county in excess of the limitations herein fixed shall be null and void. The words "value of the taxable property", as used in this section, are used in the same sense as in section 5 of article 13, of the constitution, and shall be given the same meaning and construction. [L. '37, Ch. 135, § 2, amending R. C. M. 1935, § 4630.3. Approved and in effect March 16, 1937.]

4630.4. Terms of bonds — powers to redeem — maximum interest — time required for pay-

ment — estimation — time of redemption. No bonds issued for any of the purposes designated in subdivisions (a), (b), or (c), of section 4630.1, shall be for a longer term than twenty (20) years; no bonds issued for any of the purposes designated in subdivisions (d), or (e), of section 4630.1, shall be for a longer term than ten (10) years.

The following limitations as to term shall apply to all bonds issued under subdivision (f) of section 4630.1: No bonds issued to refund bonds issued later than June 30, 1923, shall be issued for a longer term than the unexpired term of the bonds to be refunded; no bonds issued to refund bonds issued prior to June 30, 1923, shall be for a longer term than ten (10) years unless this term will require an annual tax levy for the repayment of such bonds exceeding ten (10) mills on all the property subject to taxation in the county in which case the term may be so extended as to reduce the required annual tax levy to ten (10) mills, provided, however, that the term shall not under any circumstances exceed twenty (20) years.

No bonds issued for any of the purposes designated in subdivision (g) of section 4630.1 shall be for a longer term than five (5) years.

Bonds issued for any of the purposes designated in subdivisions (h) and (i) of section 4630.1 shall not be for a longer term than will be required to repay the bonds with interest through a tax levy of ten (10) mills on all the property within the county subject to taxation and the term shall not in any case exceed twenty (20) years. The length of the term required shall be estimated and calculated by the board of county commissioners based upon the percentage of valuation of the property upon which taxes are levied and paid within such county as ascertained from the last completed assessment for state and county taxes taking into account probable changes in the taxable valuation and losses in tax collections, provided, however, that irrespective of any miscalculation by the county commissioners in fixing the term of the bonds the county must from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

All bonds issued for a longer term than five (5) years shall be redeemable at the option of the county five (5) years from the date of issue and on any payment due date thereafter before maturity if stated on the face of the bonds. The maximum rate of interest which any of such bonds may bear shall be six per cent (6%) per annum and shall be payable semiannually. [L. '37, Ch. 135, § 3, amending R. C. M. 1935, § 4630.4. Approved and in effect March 16, 1937.]

4630.6. Bonds which may be issued without holding an election — purposes—procedure — sale. Bonds issued for the purpose of enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of a county boundary line; for the purpose of funding, paying and retiring outstanding county warrants issued prior to January 1, 1937; provided, that bonds issued for funding warrants shall not be in a greater amount than the amount of the warrants of such county outstanding on July 1st, 1931; for the purpose of refunding, paying and redeeming optional, redeemable or maturing bonds issued prior to January 1, 1932; for the purpose of funding seed grain warrants and special relief warrants; for the purpose of funding, paying in full, or compromising, settling and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction; and for the purpose of refunding any bonds for which the holders have agreed to accept less than the full amount of principal and interest in full payment and satisfaction; as set forth in subdivisions (d), (e), (f), (g), (h) and (i), of section 4630.1, may be issued without submitting the same to an election. In order to issue bonds for any of said purposes it shall only be necessary for the board of county commissioners, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be paid or bonds to be refunded, showing the reason for issuing such bonds and fixing and determining the details thereof, giving notice of the sale thereof in the same manner that notice is required to be given of the sale of bonds authorized at an election, and then following the procedure prescribed in this act for the sale and issuance of such bonds.

All bonds sold without submitting the question of their issue to an election, as herein authorized, shall be sold at open competitive bidding, but all sealed and written bids submitted for the purchase of such bonds shall be considered the same as open bids. [L. '37, Ch. 135, § 4, amending R. C. M. 1935, § 4630.6. Approved and in effect March 16, 1937.]

4630.6-1. Repeals — outstanding bonds — proceedings pending—validity. That chapter 6 of the laws of the extraordinary session of the twenty-third legislative assembly and all acts and parts of acts in conflict with the provisions of this act are hereby repealed, provided, however, that any and all outstanding bonds lawfully issued or hereafter issued under proceedings which have already been completed under the provisions of said chapter 6 of the extraordinary session of the twenty-

third legislative assembly shall be and remain valid and subsisting bonds and obligations; provided, further, that any counties that prior to the effective date of this act, shall have initiated proceedings under said chapter 6 as amended, may complete such proceedings thereunder and that said chapter 6 as amended, shall govern such proceedings in their entirety and the bonds issued pursuant thereto. [L. '37, Ch. 135, § 5. Approved and in effect March 16, 1937.]

Section 6 is partial invalidity saving clause.

4630.6-2. Floating indebtedness — funding bonds or taxation authorized — kinds of bonds — interest rate — special tax levy — disposition of proceeds. The board of county commissioners of each county having, at the close of business on the 28th day of February, 1939, a floating indebtedness in excess of two-fifths ($\frac{2}{5}$) of one (1) per cent of the taxable valuation of the county for the fiscal year July 1, 1938 to June 30, 1939, consisting of valid and subsisting outstanding warrants drawn against any fund, or funds, or valid and subsisting debts and liabilities payable out of any fund or funds and for which debts and liabilities warrants have not been issued, or consisting of both such outstanding warrants and debts and liabilities, and being without sufficient money in any such fund or funds with which to pay the same, and leave a balance or balances sufficient to meet the expenditures from such fund or funds necessary to be made therefrom during the fiscal year ending June 30, 1939, may provide for the payment of such floating indebtedness, or so much thereof as is in excess of the money in such fund or funds available for the payment thereof, by one of the two following methods:

(a) Funding the same by issuing funding bonds and selling such bonds in the manner provided by law; provided, however, that such bonds may be issued and sold without the board of county commissioners being required to submit the question of issuing such bonds at an election; and provided, further, that such bonds, when issued, may, with all other outstanding indebtedness of the county exceed, in the aggregate, the limit of indebtedness permitted by statute, but the total of all outstanding indebtedness of the county, including such bonds must not exceed in the aggregate, the limit of indebtedness permitted such county under article 13 of the constitution. Such bonds may be either amortization or special bonds, the rate of interest thereon must not exceed five per centum per annum, and such bonds must not be issued for a longer term than ten (10) years, and all of the laws of this state governing the issuance, sale and

exchange of county bonds, levying of taxes for payment of principal and interest thereof, and payment and redemption thereof, so far as applicable, shall apply to such bonds.

(b) By levying a special tax or taxes sufficient to pay such floating indebtedness with the interest thereon; provided, however, that the board of county commissioners may levy a special tax or taxes during the fiscal year commencing July 1, 1939, in an amount sufficient to pay the whole of such floating indebtedness, with the interest thereon, during such fiscal year, or such board of county commissioners may levy in each year, beginning with the fiscal year commencing July 1, 1939, a special tax or taxes in an amount sufficient to pay at least twenty (20) per centum of such floating indebtedness with interest thereon in each fiscal year, but such special taxes must be levied in such amounts as will be sufficient to fully pay the whole of such floating indebtedness with the interest thereon before the 1st day of July, 1943.

The proceeds of every such special tax levy shall be by the county treasurer deposited in a special fund to be designated "debt reduction fund", and shall not be used for any purpose whatever except for payment of the principal and interest of such floating indebtedness incurred prior to and outstanding on February 28, 1939; provided, that after the principal and interest of such floating indebtedness has been fully paid, any amount remaining in such special fund, or afterwards coming into the same from protested or delinquent taxes, may be transferred to the general fund of the county, or to such other county fund as the board of county commissioners may order. [L. '39, Ch. 188, § 1. Approved and in effect March 17, 1939.

Section 3 repeals conflicting laws.

4630.6-3. Same — same — procedure by county commissioners. The board of county commissioners having any such floating indebtedness, and desiring to take advantage of any of the provisions of this act, must, not later than the 15th day of June, 1939, adopt a resolution, stating that it is the intention of the board of county commissioners of such county to provide for the payment of registered warrants outstanding at the close of business on February 28th, 1939, the method to be followed by such board of county commissioners in providing for the payment thereof, and the amount of such warrants issued and outstanding against each fund and which are to be paid by such method. If the board of county commissioners shall provide in such resolution for the payment of such warrants by the levying of a special tax or taxes in

accordance with the provisions of subdivision (b) of section 1 [4630.6-2] of this act, said board shall, in its budget for the fiscal year commencing July 1, 1939, and in its annual budget each year thereafter, make an appropriation sufficient to pay the amount of such warrants as provided by such resolution, with the interest which will be due on such amount, and at the time of fixing tax levies for county purposes said board shall annually fix a special levy of such number of mills as may be necessary to raise such amount with such interest, until such warrants with the interest thereon are fully paid. [L. '39, Ch. 188, § 2. Approved and in effect March 17, 1939.

Section 3 repeals conflicting laws.

4630.11. Form of ballots and conduct of election.

1935. ✓ Laws of 1935, chapter 99, section 3, validated bond election where ballot was not in form prescribed exactly by statute, where it was sufficient to advise the electorate of what grant of authority the county board asked at their hands. *Church v. Lincoln County*, 100 Mont. 238, 46 P. (2d) 681.

4630.12. Who are entitled to vote — lists of electors — county clerk to prepare. In all county bond elections hereafter held only qualified registered electors residing within the county, who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes, shall have the right to vote. Upon the adoption of the resolution calling for the election, the county clerk must cause to be published in the official newspaper of the county a notice, signed by him, stating that registration for such bond election will close at noon on the fifteenth day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least ten (10) days prior to the day when such registration books will be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such voting precinct, who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state, county and school district taxes, and who are entitled to vote at such election, and shall prepare poll books for such election, as provided in section 568 of the revised codes of Montana for 1935, and deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such list of qualified electors. [L. '39, Ch. 138, § 1, amending R. C. M. 1935, § 4630.12. Approved and in effect March 9, 1939.

Section 2 repeals conflicting laws.

4630.23. Counties liable on bonds.

1939.✓ Under the statute, the county commissioners are authorized to issue bonds on the credit of the county, for the purpose "of funding, paying and retiring outstanding warrants lawfully issued against the general fund, the road fund, or poor fund" etc. Bonds issued to fund road fund warrants do not impose upon the people of the county any new liability, in respect to the indebtedness already incurred. *State ex rel. Siegfried v. Carbon County et al.*, Mont., 92 P. (2d) 301.

4630.24. Treasurer's certificate as to principal and interest to be paid.

1938.✓ County commissioners have only such authority with reference to tax matters as the legislature sees fit to give them. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938.✓ Where the county board notified taxpayers to appear at a hearing of the board on the question of the levy of a tax to buy up bonds before they had matured, and when there was enough money in the county treasury to pay all lawful obligations of the county, since the tax was illegal, rather than excessive, a taxpayer who did not appear was not estopped to enjoin the collection of the tax so levied. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938.✓ The board of county commissioners, in preparing its budget and making its levy, must take into consideration the amount of money already available in each fund for which a levy is made. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938.✓ There is neither express or implied authority on the part of the county board to levy taxes to raise funds with which to buy county bonds before they mature. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

1938.✓ This section declares the policy in Montana to be in favor of levying taxes as needed. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

4630.25. Tax.

1939.✓ Under the statute, the county commissioners are authorized to issue bonds on the credit of the county, for the purpose "of funding, paying and retiring outstanding warrants lawfully issued against the general fund, the road fund, or poor fund" etc. Bonds issued to fund road fund warrants do not impose upon the people of the county any new liability, in respect to the indebtedness already incurred. *State ex rel. Siegfried v. Carbon County et al.*, Mont., 92 P. (2d) 301.

4630.27. County bond funds.

1938.✓ Where the county board notified taxpayers to appear at a hearing of the board on the question of the levy of a tax to buy up bonds before they were matured, and when there was enough money in the county treasury to pay all lawful obligations of the county, since the tax was illegal, rather than excessive, a taxpayer who did not appear was not estopped to enjoin the collection of the tax so levied. *Rogge v. Petroleum County*, 107 Mont. 36, 80 P. (2d) 380.

4630.29. Redemption of bonds before maturity—money in excess of needs at next interest date—how applied—payment of bonds in numerical order. Whenever there is available money in any sinking and interest

fund, over and above the amount required for payment of principal and interest, becoming due on the next interest payment date, sufficient to pay and redeem one or more of the outstanding bonds, or coupons in the case of amortization bonds, of the issue or series to which such sinking and interest fund belongs and such bonds are held by the state of Montana, the county treasurer must apply such available money in payment of as many of such bonds, or coupons in the case of amortization bonds, as the same will pay. Not less than fifteen (15) days before the next interest payment date, the county treasurer must give notice to the state board of land commissioners that on such interest payment date such bond or bonds, or coupon or coupons, will be paid, and the county treasurer, before such interest payment date, must remit to the state treasurer the amount required to pay such bond or bonds, with the interest thereon, or amortization bond coupon or coupons. Upon receipt of such amount the state treasurer must cancel such bond or bonds and all unpaid interest coupons attached thereto, and the coupons paid in the case of amortization bonds, and return the same, with his receipt, to the county treasurer.

Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding optional bonds or coupons in the case of amortization bonds of the issue or series to which such sinking and interest fund belongs, and which bonds or coupons are not yet due but are then redeemable or will become redeemable on the next interest payment date, and such bonds or coupons are not held by the state of Montana, the county treasurer must apply such available money in payment and redemption of as many of such bonds or coupons in the case of amortization bonds as the same will pay and redeem. The county treasurer must give notice to the holder of such bond, bonds, or coupons, if known to him, or to any bank or financial institution at which such bonds or coupons are payable, at least fifteen (15) days before the next interest payment date, that such bonds and coupons will be paid and redeemed on such date. The county treasurer must also publish in the official newspaper of the county, once a week for two (2) consecutive weeks immediately preceding such interest payment date, a notice that such bond, bonds, or coupons have been called in for redemption and will be paid in full on such interest payment date. If such bonds or coupons are payable at some bank or financial institution the county treasurer

must remit to such bank or financial institution, before such interest payment date, an amount sufficient to pay and redeem such bonds or coupons. If such bonds are not presented for payment and redemption on such interest payment date interest thereon shall cease on such date.

All bonds or amortization bond coupons paid and redeemed under the provisions of this section must be paid and redeemed in the numerical order in which the same were issued or become due. [L. '39, Ch. 46, § 1, amending R. C. M. 1935, § 4630.29. Approved and in effect February 21, 1939.

Section 3 repeals conflicting laws.

4630.30. Investment of sinking and interest fund — paid bonds — marking as paid — cancelling coupons—county treasurer's duty entry on record of registration — delivery to county clerk — investment of funds when bonds cannot be purchased. Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding bonds of the issue or series to which such sinking and interest fund belongs, and such bonds are not held by the state of Montana and are not yet redeemable or due, the county treasurer, at the direction of the board of county commissioners, shall purchase such bond or bonds of such issue or series, if this can be done at not more than par and accrued interest, or at such reasonable premium as the board may feel justified in paying, not in any case exceeding five per centum (5%).

When any bonds have been heretofore or are hereafter purchased with any sinking and interest fund moneys under the provisions of this section such bonds, with attached interest coupons, if not then in the possession of the county treasurer, shall be immediately delivered to him, and such county treasurer shall at once endorse across the face of each such bond the word "PAID" and the date thereof and shall sign such endorsement, and such treasurer shall, without detaching the same, cancel each interest coupon attached to such bonds by endorsing across the face thereof the word "CANCELLED" and the date thereof and shall sign such endorsement. After making such endorsements on such bonds and coupons the county treasurer shall enter on the record of registration thereof the date such bonds and coupons were so endorsed by him as being paid and cancelled, with the numbers and amounts thereof and the dates when the same would have become due and payable if they had not been so purchased.

The county treasurer shall then deliver such bonds, with the cancelled coupons attached, to the county clerk with a report showing the numbers thereof and the amount paid on the purchase thereof, and the county clerk shall exhibit such bonds, with attached coupons and report, to the board of county commissioners at their next regular session.

If the board cannot purchase any of the outstanding bonds at such reasonable price then such available money in such sinking and interest fund shall be invested by the county treasurer, under the direction of the board of county commissioners, in other bonds of the county, in warrants of the county or any other county of the state, in bonds or warrants of the state, or in bonds or treasury certificates of the United States; provided, however, that such sinking and interest funds shall only be invested in such securities as will become due and payable at least sixty (60) days before the date when the bonds of the county of such series or issue will become redeemable. [L. '39, Ch. 46, § 2, amending R. C. M. 1935, § 4630.30. Approved and in effect February 21, 1939.

Section 3 repeals conflicting laws.

CHAPTER 359

QUESTION OF RAISING MONEY TO BE SUBMITTED TO A VOTE

4722. Form of ballots—voting.

1935. Laws of 1935, chapter 99, section 3, validated bond election where ballot was not in form prescribed exactly by statute, where it was sufficient to advise the electorate of what grant of authority the county board asked at their hands. *Church v. Lincoln County*, 100 Mont. 238, 46 P. (2d) 681.

CHAPTER 360

COUNTY OFFICERS — ENUMERATION — QUALIFICATIONS — BONDS — GENERAL PROVISIONS

Section

4728. County and other officers—when elected—term of office—vacancies—how filled.

4725. County officers enumerated.

1936. In action for injuries caused by superintendent of poor farm in handling of truck the presumption that his duties had been regularly performed in the usual course of business did not apply to him, as he was a county employee and not a public officer. *Gagnon v. Jones*, 103 Mont. 365, 62 P. (2d) 683.

4728. County and other officers — when elected — term of office — vacancies — how filled. There shall be elected in each county the following county officers who shall possess

the qualifications for suffrage prescribed by the constitution of the state of Montana, and such other qualifications as may be prescribed by law:

One county clerk who shall be clerk of the board of county commissioners and ex-officio recorder; one sheriff; one treasurer, who shall be collector of the taxes; provided, that the county treasurer shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified.

The county attorneys, county auditors, and all elective township officers, must be elected at each general election as now provided by law. The officers mentioned in this act must take office on the first Monday of January next succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid officers, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order. [L. '39, Ch. 134, § 1, amending R. C. M. 1935, § 4728. Approved and in effect March 9, 1939.

Section 2 repeals conflicting laws.

4741. Classification of counties.

1937. In the absence of specific provisions to the contrary, statutes classifying counties according to assessed valuation of property therein, for the purpose of fixing salaries of officers, operate automatically to place a county in a certain class on the legal ascertainment of the valuation, so that

salaries are fixed by a change of such valuation though the county commissioners do not make an order designating the class. State ex rel. Jaumotte v. Zimmerman, 105 Mont. 464, 73 P. (2d) 548.

1937. Under statutes whereby the salaries of county officers are fixed according to the valuation of property in the counties in certain classes, such officers take office subject to the contingency that, by operation of law, their salaries might be reduced or increased, depending on a change in the classification thereof. State ex rel. Jaumotte v. Zimmerman, 105 Mont. 464, 73 P. (2d) 548.

4742. County commissioners to designate class.

1937. In the absence of specific provisions to the contrary, statutes classifying counties according to assessed valuation of property therein, for the purpose of fixing salaries of officers, operate automatically to place a county in a certain class on the legal ascertainment of the valuation, so that salaries are fixed by a change of such valuation though the county commissioners do not make an order designating the class. State ex rel. Jaumotte v. Zimmerman, 105 Mont. 464, 73 P. (2d) 548.

1937. Under statutes whereby the salaries of county officers are fixed according to the valuation of property in the counties in certain classes, such officers take office subject to the contingency that, by operation of law, their salaries might be reduced or increased, depending on a change in the classification thereof. State ex rel. Jaumotte v. Zimmerman, 105 Mont. 464, 73 P. (2d) 548.

1937. Section 4742 is directory rather than mandatory notwithstanding that in a proper case the board could be compelled to make the order specified in the section. State ex rel. Jaumotte v. Zimmerman, 105 Mont. 548, 73 P. (2d) 548.

CHAPTER 361

CONSOLIDATION OF COUNTY OFFICES

Section

4749.7. Salary and bond of officers upon consolidation.

4749.7. Salary and bond of officers upon consolidation. When two or more offices are consolidated under a single officer, such officer shall receive the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidation and shall give a bond in the same amount as would have been required of such officer; provided, that where county offices are consolidated as herein above described, that the officer of the consolidated offices shall have any deputies they may appoint who shall be approved by the board of county commissioners; and provided further, that the board of county commissioners shall determine the number of deputies, stenographers and clerks the said officers may appoint. [L. '37, Ch. 107, § 1, amending R. C. M. 1935, § 4749.7. Approved and in effect March 15, 1937.

Section 2 repeals conflicting laws.

CHAPTER 362

COUNTY TREASURER

Section

- 4767.4. Municipal funds—deposit—interest requirements—conformity to federal regulations.
 4767.5. Conflicting laws—repeals.

4753. Registry of warrants—interest.

1938.✓ "That the county has the right to issue anticipatory warrants must be conceded." State ex rel. Silver Bow County v. Brandjord, State Adm'r of Public Welfare, 107 Mont. 231, 82 P. (2d) 589, citing sections 4753 to 4759.

4754. Notice of redemption of warrants.

1937.✓ In a mandamus action to compel the payment of warrants, where it appeared that there was enough money in the county treasury to pay the warrants with interest, but not enough to pay them and to pay prior registered warrants with interest, and it did not appear that prior registered warrants had ever been called for payment, or paid, the warrant holder failed to make out a clear duty of the treasurer to pay his warrants. State ex rel. De Kalb v. Ferrell, 105 Mont. 218, 70 P. (2d) 290.

4756. Priority in payments of warrants.

Note. Suspension of section, see § 335.24-5.

1937.✓ In mandamus proceedings to compel payment of a warrant, where there was no suggestion on the face of the pleading that the warrant had ever been called, it was not incumbent upon the relator to negative or anticipate that defense. State ex rel. v. Blenkner v. Stillwater County, 104 Mont. 387, 66 P. (2d) 788.

1937.✓ In a mandamus action to compel the payment of warrants, where it appeared that there was enough money in the county treasury to pay the warrants with interest, but not enough to pay them and to pay prior registered warrants with interest, and it did not appear that prior registered warrants had ever been called for payment, or paid, the warrant holder failed to make out a clear duty of the treasurer to pay his warrants. State ex rel. De Kalb v. Ferrell, 105 Mont. 218, 70 P. (2d) 290.

4758. Funds reserved sixty days therefor.

1937.✓ Failure to present a warrant for payment after call is a complete defense in mandamus proceedings to compel payment. State ex rel. Blenkner v. Stillwater County, 104 Mont. 387, 66 P. (2d) 788.

1937.✓ In mandamus proceedings to compel payment of a warrant, where there was no suggestion on the face of the pleading that the warrant had ever been called, it was not incumbent upon the relator to negative or anticipate that defense. State ex rel. Blenkner v. Stillwater County, 104 Mont. 387, 66 P. (2d) 788.

1937.✓ In a mandamus action to compel the payment of warrants, where it appeared that there was enough money in the county treasury to pay the warrants with interest, but not enough to pay them and to pay prior registered warrants with interest, and it did not appear that prior registered warrants had ever been called for payment, or paid, the warrant holder failed to make out a clear duty of the treasurer to pay his warrants. State ex rel. De Kalb v. Ferrell, 105 Mont. 218, 70 P. (2d) 290.

4767.4. Municipal funds—deposit—interest requirements—conformity to federal regulations. The interest requirements on deposits of public funds under the laws of the state of Montana or otherwise by county, city and town treasurers shall not at any time be in violation of any act of the congress of the United States or of any rule or regulation of the federal reserve system or the Federal Deposit Insurance Corporation or any other fiscal agency of the United States or created by it, of which the banks of this state generally may be members or debtors. [L. '37, Ch. 104, § 1. Approved and in effect March 15, 1937.

4767.5. Conflicting laws—repeals. So much of any existing laws as are inconsistent with the intent and purpose of section 1 [4767.4] of this act, and all acts and parts of acts in conflict herewith are hereby repealed. [L. '37, Ch. 104, § 2. Approved and in effect March 15, 1937.

CHAPTER 363

SHERIFF

4773. "Process" and "notice" defined.

1936.✓ Memorandum of costs must be filed and served within five days from date of notice of decision on application for writ of supervisory control in supreme court rather than within that time from issuance of writ, and motion to strike memorandum not so filed and served was granted in State ex rel. Clark v. District Court, 103 Mont. 145, 61 P. (2d) 836.

CHAPTER 364

COUNTY CLERK

4799. Index to be kept.

1937.✓ The county commissioners have the right, in their discretion, to install a tract index as a convenient, safe, and reliable means of procuring and having available the necessary information in the office of the county clerk to enable him to perform his duties with respect to tax deeds, since where a statute confers a power, but the mode of its exercise is not prescribed, any appropriate means of carrying it out may be adopted, and under sections 4465-4465.29, and they have the implied power to contract with an abstractor to furnish the requisite information to enable the county to give notices to the proper persons on application for tax deeds. Ransom v. Pingel, 104 Mont. 119, 65 P. (2d) 616.

4801. To record decrees of partition or affecting title to real property.

1937. The lien of a judgment against an heir of an intestate attached on the death of the intestate so that the heir's deed of his undivided interest in the inherited land was subject to the lien though such interest was not disclosed of record in the office of

the county recorder, since it was neither concealed nor undisclosed. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

1937.✓ The provisions of these sections are not exclusive and do not provide the only manner and means by which judgments become liens on real estate. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

4802. Filing of copy to impart notice.

1937.✓ The provisions of these sections are not exclusive and do not provide the only manner and means by which judgments become liens on real estate. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

1937. The lien of a judgment against an heir of an intestate attached on the death of the intestate so that the heir's deed of his undivided interest in the inherited land was subject to the lien though such interest was not disclosed of record in the office of the county recorder, since it was neither concealed nor undisclosed. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

4810. Records open to inspection.

1937.✓ The right of inspection of public records by the public is subject to reasonable regulation, but such regulations must not be of such an arbitrary nature as to deny to the applicant the right granted him by law. *State ex rel. Halloran v. McGrath*, 104 Mont. 490, 67 P. (2d) 838.

1937.✓ Under section 4810 and other statutory and constitutional provisions, an elector may inspect petitions for a referendum in the possession of the recorder and county clerk, whether or not they be regarded as public records. *State ex rel. Halloran v. McGrath*, 104 Mont. 490, 67 P. (2d) 838.

4811. Duties of county clerk.

1935.✓ Judgments against counties for drainage assessments are not unliquidated claims, but constitute "amounts fixed by law" under this section, and are not required to be audited by the county board. *State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County*, 100 Mont. 581, 51 P. (2d) 635.

CHAPTER 371

CONSTABLES AND JUSTICES OF THE PEACE

4863. Justices not to practice law.

1937.✓ Cited in *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

CHAPTER 372

SALARIES AND FEES OF COUNTY OFFICERS AND DEPUTIES, JURORS AND WITNESSES

Section

- 4880. Maximum number of deputy treasurers, assessors, auditors and county attorneys.
- 4916. Fees of sheriff—mileage—expenses—conveying prisoner—delivery—return of fugitives—receipt of writs—two traveling together.
- 4922. Fees of coroner—salary in some counties—justice of peace acting as coroner.

4866. Counties classified.

1937.✓ In the absence of specific provisions to the contrary, statutes classifying counties according to assessed valuation of property therein, for the purpose of fixing salaries of officers, operate automatically to place a county in a certain class on the legal ascertainment of the valuation, so that salaries are fixed by a change of such valuation though the county commissioners do not make an order designating the class. *State ex rel. Jaumotte v. Zimmerman*, 105 Mont. 464, 73 P. (2d) 548.

1937.✓ Under statutes whereby the salaries of county officers are fixed according to the valuation of property in the counties in certain classes, such officers take office subject to the contingency that, by operation of law, their salaries might be reduced or increased, depending on a change in the classification thereof. *State ex rel. Jaumotte v. Zimmerman*, 105 Mont. 464, 73 P. (2d) 548.

4880. Maximum number of deputy treasurers, assessors, auditors and county attorneys.

The whole number of deputies allowed the county treasurer must not exceed in counties of the first class, two; in counties of all other classes, one; provided, that the board of county commissioners may allow such additional deputies as may be necessary during the months of November and December of each year. In counties of the first, second and third classes, assessors may be allowed one deputy, and during the months of March, April, May, June, July and August, not to exceed two additional deputies at a salary not exceeding one hundred dollars per month; in counties of all other classes assessors may be allowed one deputy during the months of March, April, May, June and July, at a salary not exceeding one hundred dollars per month. The whole number of deputies allowed to county auditors in counties of the first, second and third classes must not exceed one. The whole number of deputies allowed the county attorney in counties of the first and second classes must not exceed one chief deputy, and one deputy; and in all other counties such deputies as may be allowed by the board of county commissioners, not to exceed one chief deputy and one deputy. [L. '39, Ch. 97, § 1, amending R. C. M. 1935, § 4880. Approved February 27, 1939.]

Section 2 repeals conflicting laws.

4884. Mileage of all officers.

1938. "Earnings" is a more comprehensive term than either "wages" or "salary," and includes allowance of mileage and traveling expenses of a county assessor in the discharge of his duties, under a statute providing that such earnings shall be exempt from execution or garnishment if acquired within 45 days of service of the writ, whether or not they exceed actual expenses. *Williams v. Sorenson*, 106 Mont. 122, 75 P. (2d) 784.

1935.✓ The 1933 amendment to section 4884 held invalid, as far as reducing the mileage of witness is concerned, as the title of the act did not direct the

attention truly to the purpose of the act to deal with the question of witnesses. *Coolidge v. Meagher*, 100 Mont. 172, 46 P. (2d) 684.

4916. Fees of sheriff—mileage—expenses—conveying prisoner—delivery—return of fugitives—receipt of writs—two traveling together. For the service of summons and complaint on each defendant, one dollar (\$1.00);

For levying and serving each writ of attachment of execution on real or personal property, one dollar (\$1.00);

For service of attachment on the body or order of arrest on each defendant, one dollar (\$1.00);

For the service of affidavit, order, and undertaking in claim and delivery, one dollar (\$1.00);

For serving a subpoena, twenty-five cents (25c) for each witness summoned;

For serving writ of possession or restitution, two dollars (\$2.00);

For trial of the right of property or damages, including all services except mileage, three dollars (\$3.00);

For taking bond or undertaking in any case authorized by law, one dollar (\$1.00);

For serving every notice, rule of order, one dollar (\$1.00), for each person served;

For copy of any writ, process or other paper when demanded or required by law, twenty cents (20c) for each folio;

For advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, one dollar (\$1.00);

For the expense in taking and keeping possession of and preserving property under attachment, execution or other process, such sum as the court or judge may order, not to exceed the actual expense incurred, and no keeper must receive to exceed two dollars and fifty cents (\$2.50) per day and no keeper must be employed without an order of court, nor must he be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored, or where there is no reasonable danger of loss.

In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, in serving any writ, process, order or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad, and when travel is other than by railroad he shall receive eight and one-half cents (8½c) per

mile for each mile actually traveled by him both going and returning, and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail, and he shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation; provided that where more than one or more persons are transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged.

Provided further, that this act shall not apply to the delivery of prisoners at the state prison or at the reform school, or insane persons to the state insane asylum, for which he shall receive the actual expense incurred as provided by section 4885 of this code. Nor shall this act apply to trips made for the return of fugitives apprehended and arrested outside the county for which the sheriff shall receive the actual necessary expenses incurred in going for and returning with such fugitive. But no mileage must be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice or paper, when the same accompanies the summons, and the service thereof may be made at the time of the service of the summons, unless for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time, or when any paper or papers are served on more than one person on the same trip, but one mileage must be allowed or charged, and in the service of subpoenas, but one mileage must be charged when the persons named therein live in the same place or in the same direction, but mileage must be charged for the longest distance actually traveled. Any writ, order or other paper for service, must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed from such place, but if papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service. When two or more officers travel in the same automobile in the discharge of any duty but one mileage shall be allowed. [L. '37, Ch. 139, § 1, amending R. C. M. 1935, § 4916. Approved and in effect March 16, 1937.]

Section 2 repeals conflicting laws.

4922. Fees of coroner — salary in some counties — justice of peace acting as coroner. The coroner is entitled to receive and collect for his own use the following fees:

For each day or fraction of day engaged in making an investigation relative to a death, whether an inquest is later held or not, the sum of five dollars (\$5.00), provided that not more than one day's fees shall be charged for making an investigation in any one case, except in counties of the first, second and third class;

For each day or fraction of day engaged in holding an inquest, five dollars (\$5.00), provided, that not more than two days fees shall be charged for holding an inquest in any one case;

For subpoenaing each witness, including copy of subpoena, thirty cents (30c);

For summoning each juror, including copy of summons, thirty cents (30c);

For each oath administered, five cents (5c);

For making transcript of testimony, per folio, fifteen cents (15c);

For each mile actually traveled in the performance of any duty, seven cents (7c);

For filing papers, each, five cents (5c);

The total amount of fees allowed by the board of county commissioners to a coroner, except when acting as sheriff, must not exceed twenty-one hundred dollars (\$2100.00) in any one year, including compensation paid all clerks, stenographers and other clerical assistants employed by him, provided the coroner in a county having a population of 50,000 or more shall receive a salary of not more than \$3300.00 per year and mileage as above provided in lieu of all fees above mentioned, and all clerical and stenographic help shall be included in such salary. Said population to be based on the United States census of 1930.

A justice of the peace, acting as coroner, is allowed the same fees as the coroner, and no more.

If acting as sheriff, the coroner is allowed the same fees as sheriff or constable for like services. [L. '37, Ch. 9, § 1, amending R. C. M. 1935, § 4922. Approved and in effect February 10, 1937.

Section 2 repeals conflicting laws.

4929. Salary of justices of the peace in certain townships—office hours—quarters.

1938. The words "necessary for the use of his family," as used in section 9429, do not mean an absolute or indispensable necessity, but reasonable, requisite, and proper, *Williams v. Sorenson*, 106 Mont. 122, 75 P. (2d) 784, stating that the use by a public officer, or other person under private employment, of a reasonable sum as a revolving fund to pay his mileage and expenses allowed by law, or by the contract of employment, in carrying out the duties of this office or employment, is for the necessary use of his family, within the meaning of the section.

CHAPTER 375

GENERAL POWERS OF CITIES AND TOWNS

4958. City and town, how named, general corporate powers.

1936. Since a creditor of a city must present his warrant for the payment thereof to the city treasurer the place to sue the city is in the county in which the city is located. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

1936. In the absence of express agreement as to place of payment and where the creditor resides at a place different within the state from that of the debtor, the place of residence of the creditor becomes the place of performance, hence the place to trial in an action upon a contract as between individuals and corporations. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

CHAPTER 380

PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO

Section

4993. Small tracts must be platted, surveyed, and certified before sale — exception — parks and playgrounds.

4993. Small tracts must be platted, surveyed, and certified before sale — exception — parks and playgrounds. Any person who desires to subdivide and sell or transfer any tract of land in small tracts, such as orchard tracts, vineyard tracts, acreage tracts, suburban tracts, or community tracts, or small areas less than the United States legal subdivision of ten acres, must cause the same to be surveyed, platted, certified, and recorded according to the provisions of this chapter before any part or portion of the same is sold or transferred; except that it will not be necessary to comply with the provisions of this chapter relating to parks and playgrounds, and such sales or transfers must be made by reference to the plat on file and the numbers of the lots and blocks. It is unlawful for any further sales to be made without a full compliance with the provisions of this chapter, and the surveying and platting of the whole tract, showing the lots sold before the filing of the plat. [L. '39, Ch. 5, § 1, amending R. C. M. 1935, § 4993. Approved and in effect February 7, 1939.

Section 2 repeals conflicting laws.

CHAPTER 381

OFFICERS AND ELECTIONS

Section

5011. Municipal elections—judges and clerks—appointment—commission or commission-manager plan of government—election precincts in cities having—additional election—boards—voting machines—voting precincts in cities having.
5022. Salary of treasurer—percentages and fees—maximum salary—exception—city operating utility.

4996. Officers of city of second and third classes.

1936. The machinery provided by statute for the liquidation of debts against a city requires that warrants shall be issued for the amount of such indebtedness, and that they be paid out of the city treasury by the treasurer. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

5007. Who eligible.

1936. The machinery provided by statute for the liquidation of debts against a city requires that warrants shall be issued for the amount of such indebtedness, and that they be paid out of the city treasury by the treasurer. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

5013. Oath and bonds—vacancy.

1936. The machinery provided by statute for the liquidation of debts against a city requires that warrants shall be issued for the amount of such indebtedness, and that they be paid out of the city treasury by the treasurer. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

5011. Municipal elections — judges and clerks — appointment — commission or commission-manager plan of government—election precincts in cities having — additional election —boards—voting machines — voting precincts in cities having. The council or other governing body must appoint judges and clerks of election, and places of voting. Where the city or town is divided into wards there must be at least one voting place in each ward and there may be as many more as the council or other governing body shall fix, and the elector must vote in the ward in which he resides. In cities and towns divided into wards the election precincts must correspond with the wards, but a ward may be subdivided into several voting precincts, and when so divided the elector shall vote in the precinct in which he resides. In cities and towns operating under the commission, or the commission-manager plan of municipal government, where there are no wards for election purposes and the officers of the city or town are elected at large, the election precincts shall correspond with the election precincts in such city or town as fixed by the board of county commissioners for state and county elections, but such precincts may be by the city commission divided

into as many voting precincts, to facilitate the voting and counting of the vote, as the city commission shall by ordinance provide, and the elector shall vote in the voting precinct so designated, in which he resides. For all municipal elections the city council or other governing body may appoint a second or additional board of election judges for any voting precinct in which there were cast three hundred and fifty or more votes in the last general city election or in which council or other governing body believes as many as three hundred and fifty ballots will be cast in the next general city election, and such additional board of election judges shall have the same powers and duties, and under the same conditions, as the second or additional board of election judges for general elections appointed by boards of county commissioners under the provisions of section 587 of the revised codes of Montana of 1935, as amended by chapter 61 of the laws of the twenty-fifth legislative assembly of the state of Montana. In all cities and towns where voting machines are used, the city council or other governing body must arrange the precincts so that there will be no more than six hundred votes in any voting precinct. All municipal elections must be conducted in accordance with the general laws of the state of Montana relating to such election. [L. '39, Ch. 19, § 1, amending R. C. M. 1935, § 5011. Approved and in effect February 14, 1939.]

Section 2 repeals conflicting laws.

5022. Salary of treasurer—percentages and fees — maximum salary — exception — city operating utility. The annual salary and compensation of the treasurer must be fixed by ordinance, and must be for all services rendered by such treasurer in any capacity, (except, however, in cases where a city of the third class or a town owns and operates a public utility or utilities and receives revenue therefrom as hereafter in this section provided) and no treasurer must be allowed any percentages or fees in addition thereto. In cities of the first class, the annual salary of the treasurer must not exceed three thousand dollars, in cities of the second class must not exceed two thousand dollars, and in cities of the third class it must not exceed seven hundred dollars, and in towns it must not exceed five hundred dollars; provided, however, that where a city of the third class, or a town, shall own and operate a public utility or utilities such as water supply, water works, gas, lighting system, or utilities similar to the foregoing, and receives the revenue derived therefrom, then the treasurer of such city, or town, may be paid additional salary or compensation to be fixed by ordinance and the

duties of the treasurer with reference to the collection and safe-keeping of the revenues derived from such public utility shall likewise be fixed by ordinance and the amount of such additional salary or compensation shall be in accordance with the additional duties and responsibilities placed upon the treasurer by reason of such public utility or utilities and shall be in such amount as the council may determine. [L. '39, Ch. 69, § 1, amending R. C. M. 1935, § 5022. Approved and in effect February 27, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 382

EXECUTIVE POWERS — MAYOR — CLERK — TREASURER — CHIEF OF POLICE — ATTORNEY

Section

5035.1. Inactive accounts — transfer to general fund.

5031. Mayor to preside, sign warrants, etc.

1936.✓ The machinery provided by statute for the liquidation of debts against a city requires that warrants shall be issued for the amount of such indebtedness, and that they be paid out of the city treasury by the treasurer. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

5034. Duties of city treasurer.

1936.✓ The machinery provided by statute for the liquidation of debts against a city requires that warrants shall be issued for the amount of such indebtedness, and that they be paid out of the city treasury by the treasurer. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

1936.✓ Since a creditor of a city must present his warrant for the payment thereof to the city treasurer the place to sue the city is in the county in which the city is located. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

5035.1. Inactive accounts—transfer to general fund. Whenever the council of any city or town having a corporate existence in this state, or hereafter organized under any of the laws thereof, shall deem it necessary to remove inactive accounts from its records where said accounts shall not have any further purpose, it shall be lawful for said council to direct the proper city or town officials to file claims against the respective inactive funds in favor of the general fund of said city or town, after which the council shall allow the same and cause the inactive funds to be closed and not continued in the record of active funds. [L. '39, Ch. 57, § 1. Approved and in effect February 24, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 383

LEGISLATIVE POWERS — POWERS OF CITY COUNCILS — ORDINANCES — INITIATIVE AND REFERENDUM

Section

5039.5-1. Changing names or numbers of streets — power of council — property owners' objections.

5039.5-2. Plat showing changes—filing.

5039.61. Leasing or disposing of city property — power of city — right of park commissioners to lease land.

5039.74. Power of condemnation.

5039. Powers of city councils.

1937.✓ Cited in *Northern Pacific Ry. Co. v. Lutey*, 104 Mont. 321, 66 P. (2d) 785.

1936.✓ Cited in *Johnson v. City of Billings*, 101 Mont. 462, 54 P. (2d) 579.

5039.2. Licenses—requirements.

1935.✓ Sections 5183-5193, providing for the examination and licensing of plumbers, held not invalid as delegation of legislative power to municipal examining board, nor for failing to provide for review of board's actions. *State v. Stark*, 100 Mont. 365, 52 P. (2d) 890.

5039.3. Issuing licenses.

1938.✓ Cited in *State ex rel. McIntire v. City Council of City of Libby*, 107 Mont. 216, 82 P. (2d) 587, holding that a city may limit the number of beer or liquor licenses that may be issued.

5039.5. Streets, alleys, sidewalks, parks, and public grounds.

1938.✓ A city may vacate a public park on land dedicated to the city for park purposes if the donors waive a reverter clause in the dedication deed of the land if it ceases to be used as a park, *Lloyd v. City of Great Falls*, 107 Mont. 442, 86 P. (2d) 395, even though statute, enacted subsequent to the dedication of the land, require that property dedicated to the city for certain purposes must be used exclusively for such purposes, as provided by sections 5043 and 5044.

1938.✓ The original enactment of the section, section 325, subdivision 10, Comp. Stat. 1887, fifth div., did not contain the word "parks," which was added by section 3259, subdivision 6, Rev. Codes of 1907, which amendment did not change the meaning of the section, as the words "public grounds" were broad enough to include "parks." Had it been contemplated by the grantors of land dedicated to the city for park purposes that the city could never vacate the use of the land for park purposes, there would have been no occasion for a clause providing for a reverter in that event. *Lloyd v. City of Great Falls*, 107 Mont. 442, 86 P. (2d) 395.

1937.✓ City streets are within the exclusive jurisdiction of the city through its council. *State ex rel. City of Butte v. Healy*, 105 Mont. 227, 70 P. (2d) 437.

5039.5-1. Changing names or numbers of streets — power of council — property owners' objections. Any town or city council may in its judgment, when it appears to be the best interest of the town or city, and the in-

habitants thereof, expressed by resolution duly and regularly passed and adopted, change the name or number of any street or avenue, except that 51% of the property owners objecting to the change of name or question involved shall be supreme in this matter subject to the conditions provided for in section 2 [5039.5-2] of this act. [L. '39, Ch. 21, § 1. Approved and in effect February 14, 1939.]

Section 3 repeals conflicting laws.

5039.5-2. Plat showing changes — filing.

That the town or city engineer, or if there be no such officer the council may employ one for such purpose, shall prepare a plat showing such subdivisions, streets and avenues affected by such change, with the appropriate notation of change thereon, and upon approval of such plat by the council, and the filing of the same as approved with the county clerk and recorder wherein the town or city is situated, the names or numbers of said streets and avenues shall be deemed changed in accordance to the terms of said resolution as provided for in section 1 [5039.5-1] hereof. [L. '39, Ch. 21, § 2. Approved and in effect February 14, 1939.]

Section 3 repeals conflicting laws.

5039.6. Lighting and cleaning streets — regulation of sidewalks—removal of offensive material from public ways and grounds—tax levy.

1937. ✓ A special tax provided for payment for removal of garbage held a device by which property owners are required to pay for services rendered, in *Northern Pacific Ry. Co. v. Lutey*, 104 Mont. 321, 66 P. (2d) 785.

1937. ✓ In action for recovery of taxes paid for garbage removal, a judgment for defendant on the pleadings was affirmed on appeal on the ground that, in view of the issue raised by the pleadings that garbage was removed from plaintiff's property, and hence, if that question be decided in the affirmative, at least some of its property was subject to the tax, and it was not entitled to judgment on the pleadings. *Northern Pacific Ry. Co. v. Lutey*, 104 Mont. 321, 66 P. (2d) 785.

5039.26. Fire department — alarm — police telegraph.

1935. ✓ Cited in *State ex rel. Kern v. Arnold*, 100 Mont. 346, 49 P. (2d) 976.

5039.27. Provisions for fire equipment.

1935. ✓ Cited in *State ex rel. Kern v. Arnold*, 100 Mont. 346, 49 P. (2d) 976.

5039.28. Inspection and regulation of fire hazards.

1935. ✓ Cited in *State ex rel. Kern v. Arnold*, 100 Mont. 346, 49 P. (2d) 976.

5039.61. Leasing or disposing of city property — power of city — right of park commissioners to lease land. The city or town council has power; to sell, dispose of, or lease any property belonging to a city or town, provided, however, that such lease or transfer be made by ordinance or resolution passed by a two-thirds vote of all the members of the council; and provided further that if such property be held in trust for a specific purpose such sale or lease thereof be approved by a majority vote of taxpayers of such municipality cast an election called for that purpose; and provided further that nothing herein contained shall be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city heretofore acquired for parks within the limitation prescribed by subdivision 5 of section 5162, revised codes of Montana of 1935. [L. '37, Ch. 35, § 1, amending R. C. M. 1935, § 5039.61. Approved and in effect February 19, 1937.]

Section 2 repeals conflicting laws.

5039.74. Power of condemnation. The city or town council has power: To condemn private property for opening, establishing, widening, or altering any streets, alley, park, sewer or waterway in the city or town, and for establishing, constructing and maintaining any sewer, waterway or drain ditch outside of the corporate limits of the municipality, or for any other municipal and public use and the ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking, and [?] must conform to and the proceedings thereunder had as provided in the code of civil procedure concerning eminent domain. [L. '37, Ch. 180, § 1, amending R. C. M. 1935, § 5039.74. Approved and in effect March 18, 1937.]

Section 2 repeals conflicting laws.

5043. Organized cities and towns authorized to take by gift, donation, devise, etc.

1938. ✓ This section does not prevent a city from devoting land dedicated to it, before the enactment of this section, for park purposes by deed providing that it shall revert to the donor if used for any other purpose, where such reverter clause has been waived by the donor. *Lloyd v. City of Great Falls*, 107 Mont. 442, 86 P. (2d) 395.

5044. Who may make gift, donation, or grant — property included therein — how used and administered.

1938. ✓ This section does not prevent a city from devoting land dedicated to it, before the enactment of this section, for park purposes by deed providing that it shall revert to the donor if used for any other purpose, where such reverter clause has been waived by the donor. *Lloyd v. City of Great Falls*, 107 Mont. 442, 86 P. (2d) 395.

CHAPTER 384**MUNICIPAL CONTRACTS AND
FRANCHISES**

Section

5070. Awarding contracts—letting to lowest responsible bidder—advertisement for bids—publication—posting.

5070. Awarding contracts—letting to lowest responsible bidder—advertisement for bids—publication—posting. All contracts for work, or for supplies, or for material, for which must be paid a sum exceeding five hundred (\$500.00) dollars, must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of three years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official newspaper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise in a weekly newspaper published therein, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a newspaper shall be made twice, the first publication to be made not more than twenty-two (22) days nor less than fifteen (15) days before the consideration of bids and the second publication shall be made not less than five (5) days nor more than ten (10) days before the consideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set of considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths ($\frac{3}{4}$) of the members of the council present at the meeting, daily recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded. [L. '39, Ch. 18,

§ 1, amending R. C. M. 1935, § 5070. Approved and in effect February 14, 1939.

Section 2 repeals conflicting laws.

CHAPTER 385**PRESENTATION AND PAYMENT OF
CLAIMS—CITY WARRANTS**

Section

5080. Defective highways and public works—notice of claim for injuries—necessity—record of reported defects—duty of city clerk to make—written notice of injury—warnings—duty of city.

5078. Presentation of claims—limitation of actions.

1936. The machinery provided by statute for the liquidation of debts against a city requires that warrants shall be issued for the amount of such indebtedness, and that they be paid out of the city treasury by the treasurer. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

5079. Allowance and payment of claims—cash basis.

1936. The machinery provided by statute for the liquidation of debts against a city requires that warrants shall be issued for the amount of such indebtedness, and that they be paid out of the city treasury by the treasurer. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

5080. Defective highways and public works—notice of claim for injuries—necessity—record of reported defects—duty of city clerk to make—written notice of injury—warnings—duty of city. Before any city or town in this state shall be liable for damages to person and/or property for, or on account of, any injury or loss alleged to have been received or suffered by reason of any defect or obstructions in any bridge, street, road, sidewalk, culvert, park, public ground, ferry-boat, or public works of any kind in said city or town, it must first be shown that said city or town had actual notice of such defect or obstruction and reasonable opportunity to repair such defect or remove such obstruction before such injury or damage was received; the city clerk must make a permanent record of all such reported defects and shall report to the city street commissioner immediately upon notice of such defect or obstruction; and the person alleged to have suffered such injury or damage, or someone in his behalf, shall give to the city or town council, commission, manager, or other governing body of such city or town, within sixty days after such injury is alleged to have been received or suffered, written notice thereof, which notice shall state the time when and the place where such injury alleged to have occurred. Provided, however,

that this section shall not exempt cities and towns from liability for negligence because of failure to properly place signs, markers or signals to warn persons of excavations or other obstructions existing and caused by said city or town, upon any bridge, street, alley, road, sidewalk, pavement, culvert, park, public ground, ferry-boat or public works of any kind. [L. '37, Ch. 122, § 1, amending R. C. M. 1935, § 5080. Approved and in effect March 15, 1937.

Section 2 repeals conflicting laws.

5080.1. Non-liability of municipality for injuries caused by accumulations of snow or ice in streets or public ways.

1936.✓ The constitution, article 3, section 6, does not give a right of action against the abutting owner for an injury caused a pedestrian by the bad condition of a sidewalk, because section 5080.1 provides that the municipality shall be immune from liability for such an injury, on the theory that otherwise the injured person would have no remedy. *Stewart v. Standard Publishing Co.*, 102 Mont. 43, 55 P. (2d) 694.

5081. City warrants—rate of interest.

1936.✓ The machinery provided by statute for the liquidation of debts against a city requires that warrants shall be issued for the amount of such indebtedness, and that they be paid out of the city treasury by the treasurer. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

1936.✓ Since a creditor of a city must present his warrant for the payment thereof to the city treasurer the place to sue the city is in the county in which the city is located. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

5083. Registry of warrants.

1936.✓ Since a creditor of a city must present his warrant for the payment thereof to the city treasurer the place to sue the city is in the county in which the city is located. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

1936.✓ The machinery provided by statute for the liquidation of debts against a city requires that warrants shall be issued for the amount of such indebtedness, and that they be paid out of the city treasury by the treasurer. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

CHAPTER 386

BUDGET SYSTEM FOR CITIES AND TOWNS

5083.7. Appropriations — transfers among appropriations—use of borrowed money—liabilities for expenditures in excess of budget.

1936.✓ Courts may compel compliance with section 5108.16, prescribing minimum salaries for policemen in cities of the first class, even though it would entail greater expenditure than fixed by the budget, since expenditures made in accordance with an order of a court of competent jurisdiction are excepted from the budget law, section 5083.7, and, if there

is a conflict between the two laws, section 5108.16 controls, as it is the later law. *State ex rel. Gebhardt v. City Council of Helena*, 102 Mont. 27, 55 P. (2d) 671.

CHAPTER 387

JUDGMENTS — RESPONSIBILITY FOR DAMAGE BY RIOTS

5084. Judgment against cities and towns—mode of payment.

1935.✓ The town council has discretion either to levy tax to pay judgment against town or to fund it, before expiration of statutory time, and cannot be coerced, by mandamus, to levy tax. *State ex rel. North American Life Ins. Co., of Chicago v. District Court*, 100 Mont. 476, 49 P. (2d) 1119.

5085. Judgment may be funded.

1935.✓ The town council has discretion either to levy tax to pay judgment against town or to fund it, before expiration of statutory time, and cannot be coerced, by mandamus, to levy tax. *State ex rel. North American Life Ins. Co., of Chicago v. District Court*, 100 Mont. 476, 49 P. (2d) 1119.

CHAPTER 390

POLICE DEPARTMENT

Section

5098. Police commission required in first and second class cities—compensation—other cities and towns may provide for commission by ordinance.

5101.1. Reinstatement — physical examination — probationary period.

5101.2. Same—rights upon reinstatement.

5108.2. Police reserves—qualification of members—when optional—when mandatory—joining.

5108.5. Payment of police reserves — deceased policemen — dependent widow and minor children — guardian of such children — definitions.

5108.7. Police reserves—payment—tax levy—limit —collection—disposition.

5108.16. Minimum wage of police in first class cities.

5095. Police department.

1936. Cited in *Johnson v. City of Billings*, 101 Mont. 462, 54 P. (2d) 579.

5098. Police commission required in first and second class cities—compensation—other cities and towns may provide for commission by ordinance. In cities of the first and second class the mayor shall nominate, and with the consent of the city council appoint three residents of such city, who shall have the qualifications required by law to hold a municipal office therein, and who shall constitute a board to be known by the name of "police commission" who shall hold office for three years, and that one such member must be appointed annually, at the first regular meeting of the

city council in May of each year. Provided, that at the first meeting of the council in the month of May after the passage of this act, the mayor, subject to the approval of the council, shall appoint three members of such police commission, one to serve for one year, one for two years and one for three years from the date of their appointment and confirmation.

The compensation of the members of such board shall be fixed by the city council, not to exceed ten dollars per day, nor more than fifty dollars per month for any month for each member in cities of the first and second class.

The council of any town or city, other than a city of the first and second class, may provide by ordinance for such a police commission in any such city or town. [L. '39, Ch. 96, § 1, amending R. C. M. 1935, § 5098. Approved and in effect March 1, 1939.

Section 3 repeals conflicting laws.

5101.1. Reinstatement — physical examination—probationary period. An applicant for a position on the police force who has already served twenty (20) years or more in the aggregate on the police force of the city or town in the state of Montana in which he is applying for reinstatement, may make application within one (1) year from the date on which his name was removed from the active list of police officers, except that such application need not be made by officers who have heretofore been removed from said list, to the police commission of that city or town wherein he last served and his application must be considered by police commission within thirty (30) days after receipt of said application, and said commission shall not require the applicant to have a physical examination or other examination required of applicants for a position on the police force, and in the event that the police commission recommends the reinstatement of said applicant as a member of the police force, the probationary term required of applicants for positions shall be dispensed with as to such applicant for reinstatement, and it shall be the duty of the mayor to submit to the city council of said city at its next regular meeting, the recommendation of the police commission, and in the event that a majority of the city council vote in favor of adopting the recommendation of the commission, said applicant shall be immediately reinstated as a police officer in said city or town. [L. '39, Ch. 205, § 1. Approved March 17, 1939.

5101.2. Same — rights upon reinstatement. An applicant for reinstatement under the provisions of section 1 [5101.1] of this act may be reinstated and passed into the reserve list of police officers so as to enjoy all the benefits,

pensions and rights which accrue to police officers placed on the reserve list in said city or town; and provided further that the pension benefits to be allowed to such reinstated officer shall be computed upon the basis of his last full year of active service on said police force. [L. '39, Ch. 205, § 2. Approved March 17, 1939.

5108.2. Police reserves — qualification of members—when optional—when mandatory—joining. Whenever any person who has heretofore or shall hereafter have completed twenty (20) years or more in the aggregate, either as a probationary officer, a regular member of such police department, or as a special officer of said police department, in any capacity or rank whatever in cities of the first and second class, provided that such police officer serving in the United States army or navy, in time of war or national emergency, shall be given credit upon his police record for such service in the same manner as though on active police duty for such time, he may at his option pass from the active list of police officers of such city or town and become a member of the police reserves of said city or town, and if he reaches the age of sixty-five (65) years while in active service, he shall pass from the active list of police officers of such city or town and become a member of the police reserves of such city or town. [L. '37, Ch. 78, § 1, amending R. C. M. 1935, § 5108.2. Approved and in effect March 3, 1937.

Section 3 is partial invalidity saving clause.

Section 4 repeals conflicting laws.

5108.5. Payment of police reserves — deceased policemen — dependent widow and minor children—guardian of such children—definitions. Whenever any policeman or officer shall from age or disability become transferred from the active list of the police officers of any city or town to the reserve list of such city or town, he shall thereafter be paid in monthly payments from the funds in this act provided for, a sum equal to one-half ($\frac{1}{2}$) the salary he was receiving during the year prior to the time he passed to the police reserve list.

Upon the death of any policeman or any officer of any city or town, his surviving dependent widow, if there be such a surviving widow, shall, as long as she remains his widow, be paid, from the police reserves fund, monthly payments in such amount as the trustees of the said fund shall deem proper, but in no event exceeding the sum of fifty dollars (\$50.00) a month. No surviving widow shall be entitled to payments under the provisions of this act if she be fifteen years younger than her husband, unless she shall have been mar-

ried to and living with her husband for the ten years immediately preceding his death. And if such policeman or officer shall leave a dependent minor child, or dependent minor children, then upon the death of such policeman or officer, providing he leaves no surviving widow, or upon the death or remarriage of his widow, his surviving dependent minor child, or dependent children, collectively, if there be more than one dependent minor child, shall be paid the same monthly payments as are herein provided to be paid to the surviving widow, until such minor child, or minor children, shall have attained the age of sixteen years or shall have married, provided further that the payments herein provided for to be made to the surviving widow and/or children shall not be made if such payments will require an increase in the millage tax levy now provided for by section 5108.7, revised codes of Montana, 1935.

Payments as herein provided for, to be made to the minor child or children of police officers shall be paid to the duly appointed, qualified and acting guardian of such child or children, for the use of such minor, until such minor shall have reached the age of sixteen (16) years or shall have married and in case there is more than one minor child, upon each such child reaching the age of sixteen (16) years the pro rata payments to such child shall cease and shall be made to the remaining minor child or children until the youngest child shall reach the age of sixteen (16) years or shall have married.

The term "policeman", or "police officer", as herein used shall include all those on the reserve list, as well as "active police", "police officer", and/or "patrolman". [L. '39, Ch. 15, § 1, amending R. C. M. 1935, § 5108.5. Approved and in effect February 11, 1939.

Section 2 repeals conflicting laws.

5108.7. Police reserves — payment — tax levy—limit—collection—disposition. For the purpose of paying the salaries of policemen who have been placed upon the reserve list of the cities of the first and second class, the city or town council, or commissioners, shall in the manner provided for by law, and at the time of the levy of the annual tax, levy such special tax of not to exceed one (1) mill on the dollar upon the assessed valuation of all taxable property within the limits of said city or town, which said tax shall be collected as other taxes and when so collected, shall be paid into the fund created for the payment of such salaries of police officers upon the reserve list. [L. '37, Ch. 78, § 2, amending R. C. M. 1935, § 5108.7. Approved and in effect March 3, 1937.

Section 3 is partial invalidity saving clause.

Section 4 repeals conflicting laws.

5108.16. Minimum wage of police in first class cities. That from and after the passage and approval of this act there shall be paid to each member of the police department of cities of the first class of the state of Montana, a minimum wage, for a daily service of eight consecutive hours' work, of at least one hundred sixty (\$160.00) dollars per month for the first year of service, and thereafter of at least one hundred sixty (\$160.00) dollars per month plus one (\$1.00) dollar per month for each additional year of service up to and including the tenth year of such additional service. [L. '39, Ch. 96, § 2, amending R. C. M. 1935, § 5108.16. Approved and in effect March 1, 1939.

Section 3 repeals conflicting laws.

1936. ✓ Section 5108.16, prescribing minimum wages for policemen in cities of the first class does not violate constitution, article 12, section 4, prohibiting legislature from levying taxes for municipalities. State ex rel. Gebhardt v. City Council of Helena, 102 Mont. 27, 55 P. (2d) 671.

1936. ✓ Courts may compel compliance with section 5108.16, prescribing minimum salaries for policemen in cities of the first class, even though it would entail greater expenditure than fixed by the budget, since expenditures made in accordance with an order of a court of competent jurisdiction are excepted from the budget law, section 5083.7, and, if there is a conflict between the two laws, section 5108.16 controls, as it is the later law. State ex rel. Gebhardt v. City Council of Helena, 102 Mont. 27, 55 P. (2d) 671.

CHAPTER 391

FIRE DEPARTMENT — FIREMEN'S DISABILITY FUND

Section

- 5109. (a) Fire department for cities and towns — city council in charge — powers.
- 5109.1. Police power — effective date of act.
- 5110.1. Firemen — cities of first class — minimum wage — yearly increase.
- 5110.2. Violation of this act shall be deemed a misdemeanor — penalty.
- 5110.3. Firemen — cities of second class — minimum wages — yearly increase — probationary period.
- 5110.4. Violation of this act shall be deemed a misdemeanor — penalty.
- 5116.2. Volunteer fire department — cities of second class — establishment — exemptions — definition of "volunteer" — functions — eligibility as trustee of fire department relief association — service pension — compensation of volunteer fireman.
- 5116.3. Volunteer fireman — second class cities — service under supervision of chief of paid fire department.
- 5118. Fire department — disability and pension fund — of what it consists.

Section

5119. Fire department—disability and pension fund—special tax for maintenance.
5132. Pensions to retired firemen.
5133. Disability pension—amount—change—power of association—allowance under workmen's compensation act—volunteer firemen.
5134. Pensions to widows or orphans—amount—change—power of association—marriage of widow—payment to orphans—cessation—volunteer firemen.
- 5138.1. Firemen—cities of first class—three platoons—eight-hour shifts—days off.
- 5138.2. Firemen—cities of second class—three platoons—eight-hour shifts—days off.

5109. (a) Fire department for cities and towns—city council in charge—powers. There shall be in every city and town of this state a fire department, which shall be organized, managed and controlled as in this act provided.

(b) The council of cities and towns shall have charge of and supervision over the fire department thereof, with power to regulate its duties, to maintain a fire alarm telegraph, to erect engine, hose and hook-and-ladder houses, and provide engines and other implements and apparatus for the extinguishing of fire, and make such other ordinances not inconsistent with the provisions of this act and the other laws of the state for the government, direction and management of the fire department. [L. '37, Ch. 4, § 1, amending R. C. M. 1935, § 5109. Approved and in effect February 2, 1937.

1939. ✓ Section 5116.1, when read in connection with section 5140, would seem clearly to imply that a city government can abolish its volunteer department when in its judgment a paid department should be established in lieu thereof. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1935. ✓ Cited in State ex rel. Kern v. Arnold, 100 Mont. 346, 49 P. (2d) 976.

5109.1. Police power—effective date of act. This act is hereby declared to be enacted as a part of the police power of the state, in the interest of public safety, and shall be in full force and effect from and after its passage and approval. [L. '37, Ch. 4, § 4. Approved February 2, 1937.

Section 2 is partial invalidity saving clause.

Section 3 repeals conflicting laws.

5110. Fire department to consist of what—compensation.

1935. ✓ Cited in State ex rel. Kern v. Arnold, 100 Mont. 346, 49 P. (2d) 976.

5110.1. Firemen—cities of first class—minimum wage—yearly increase. There shall be paid to each member of the fire departments of cities of the first class of the state of Montana a minimum wage for a daily service of

eight (8) consecutive hours work of at least one hundred and sixty and no/100 dollars (\$160.00) per month for the first year of service, and thereafter of at least one hundred and sixty and no/100 dollars (\$160.00) per month, plus one dollar (\$1.00) per month for each additional year of service up to and including the tenth year of such additional service, it being hereby expressly declared the purpose and intent of this act to fix the minimum wage of members of the fire department of said cities of the first class of the state of Montana at the sum of one hundred and sixty and no/100 dollars (\$160.00) per month and to increase said compensation annually thereafter at the rate of not less than one dollar (\$1.00) per month for each additional year of active service after the first year thereafter rendered by them, not exceeding ten (10) years of such service after the first year. [L. '37, Ch. 15, § 2. Approved and in effect February 10, 1937.

5110.2. Violation of this act shall be deemed a misdemeanor—penalty. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred (\$100.00) dollars, or more than six hundred dollars (\$600.00), or by imprisonment in the county jail for not less than thirty (30) days or more than seven (7) months or by both such fine and imprisonment. [L. '37, Ch. 15, § 3. Approved and in effect February 10, 1937.

Section 4 is partial invalidity saving clause.

Section 5 repeals conflicting laws.

5110.3. Firemen—cities of second class—minimum wages—yearly increase—probationary period. There shall be paid to each member of the fire department of cities of the second class of the state of Montana a minimum wage for a daily service of eight (8) consecutive hours work of at least one hundred forty and no/100 dollars (\$140.00) per month for the first year of service, and thereafter of at least one hundred forty and no/100 dollars (\$140.00) per month, plus one dollar (\$1.00) per month for each additional year of service up to and including the tenth (10th) year of such additional service, it being hereby expressly declared the purpose and intent of this act to fix the minimum wage of members of the fire department of said cities of the second class of the state of Montana at the sum of one hundred forty and no/100 dollars (\$140.00) per month and to increase said compensation annually thereafter at the rate of not less than one dollar (\$1.00) per month for each additional year of active service after

the first year thereafter rendered by them, not exceeding ten (10) years of such service after the first year. Provided, that a new fireman, that is, a paid fireman when he is first employed shall for the first six (6) months following his employment be on probation during which time his pay shall be one hundred ten and no/100 dollars (\$110.00) per month, thereafter, if he is still employed, his salary shall be one hundred forty and no/100 dollars (\$140.00) per month plus one dollar (\$1.00) per month for each additional year of service up to and including the tenth year of such additional service. [L. '39, Ch. 136, § 2, amending L. '37, Ch. 200, § 2. Approved and in effect March 9, 1939.

Section 6 is partial invalidity saving clause.

Section 7 repeals conflicting laws.

5110.4. Violation of this act shall be deemed a misdemeanor — penalty. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred (\$100.00) dollars, or more than six hundred (\$600.00) dollars, or by imprisonment in the county jail for not less than thirty (30) days or more than seven (7) months, or by both such fine and imprisonment. [L. '39, Ch. 136, § 5, amending L. '37, Ch. 200, § 3. Approved and in effect March 9, 1939.

Section 6 is partial invalidity saving clause.

Section 7 repeals conflicting laws.

5111. Powers of mayor to suspend firemen.

1936. ✓ Evidence in trial of fireman held insufficient to justify his suspension for misconduct in receiving stolen goods without making proper inquiry. State ex rel. Wentworth v. Baker, 101 Mont. 226, 53 P. (2d) 440.

5116. Volunteer companies not affected.

1939. When a volunteer fire department is abolished by ordinance an expulsion of the particular members thereof occurs just as effectively as if each volunteer has been expelled for misconduct or some other reason, so that their election of a treasurer is invalid, and the treasurer elected by the eligible members is entitled to the office. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

5116.1. Levy of tax for volunteer fire departments.

1939. ✓ Section 5116.1, when read in connection with section 5140, would seem clearly to imply that a city government can abolish its volunteer department when in its judgment a paid department should be established in lieu thereof. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

5116.2. Volunteer fire department—cities of second class — establishment — exemptions — definition of “volunteer” — functions — eligibility as trustee of fire department relief association — service pension — compensation of

volunteer fireman. In addition to a paid department, the city council, city commission or other governing body in cities of the second class may make provision for a volunteer fire department in addition to the paid fire department which said volunteer fire department shall be exempt from obligations in this act set out as applying to the paid department. Likewise shall the city commission or governing department be exempted as to compliance with this act insofar as the same may pertain to the said volunteer fire department by way of penalties and infringements; a volunteer being described as one who is an enrolled member of the volunteer fire department and assists the paid fire department; who is eligible to serve only on the board of trustees of the fire department relief association of such city, provided not more than three volunteer members are on said board of trustees, but who shall not be entitled to receive a “service pension”. The governing body of said city may, at its discretion, pay an enrolled volunteer fireman the minimum of one dollar (\$1.00) for attending a fire, and a minimum of one dollar (\$1.00) for each hour or fraction of an hour after the first hour in active service at said fire, or returning any or all equipment to its proper place. [L. '39, Ch. 136, § 3, amending L. '37, Ch. 200. Approved and in effect March 9, 1939.

Section 6 is partial invalidity saving clause.

Section 7 repeals conflicting laws.

Note. Penalty for violation of act, see § 5110.4.

5116.3. Volunteer fireman — second class cities—service under supervision of chief of paid fire department. In the attending of fires any volunteer shall act and serve under the supervision of the chief of the paid fire department. [L. '39, Ch. 136, § 4, amending L. '37, Ch. 200. Approved and in effect March 9, 1939.

Section 6 is partial invalidity saving clause.

Section 7 repeals conflicting laws.

Note. Penalty for violation of act, see § 5110.4.

5117. Disability and pension fund.

1939. ✓ It is the intent and spirit of this act to benefit the members of organized fire departments, whether the membership be a paid one or merely volunteer. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. ✓ When a volunteer fire department is abolished by ordinance an expulsion of the particular members thereof occurs just as effectively as if each volunteer has been expelled for misconduct or some other reason, so that their election of a treasurer is invalid, and the treasurer elected by the eligible members is entitled to the office. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. ✓ A member of a department abolished by the city government can no longer qualify as an eligible member of the relief association. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. ✓ In order to participate in the affairs and enjoy the benefits of the relief association, a person must be a confirmed member of an organized fire department, or, at least, a member of a volunteer department recognized by the city or town council. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

5118. Fire department—disability and pension fund—of what it consists. The disability and pension fund of the fire department relief association of such city or town shall consist of all bequests, fees, gifts, emoluments or donations given or paid to such fund, or any of its members, except as otherwise designated by the donor, and a monthly fee which shall be paid into the fund by each paid member and part paid member of said fire department relief association amounting to three (3) per cent of his regular monthly salary, the proceeds of a tax levy as provided by section 5119 of this act, and all monies received from the state of Montana as provided for by section 5127, and the interest of any portion of said fund. [L. '39, Ch. 43, § 1, amending R. C. M. 1935, § 5118. Approved February 21, 1939. In effect July 1, 1939.

5119. Fire department—disability and pension fund—special tax for maintenance. For the purpose of maintaining said disability and pension fund of such fire department relief association, in an amount equal to one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, the city or town council or the commission or other proper authority of any municipality that is now or may hereafter be established under special or local law passed by the legislative assembly and adopted by the electors entitled to vote thereon, shall, annually, at all times when the said relief association fund contains an amount less than one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, in the manner provided by law, and at the time of the levy of the annual tax, levy a special tax of not to exceed one (1) mill on the dollar upon the taxable valuation of all taxable property assessed for taxes within the limits of said city, town or municipality, which said tax shall be collected as other taxes and when so collected shall be paid into the disability and pension fund of the fire department relief association of said city, town or municipality. [L. '39, Ch. 43, § 2, amending R. C. M. 1935, § 5119. Approved February 21, 1939. In effect July 1, 1939.

5123. Benefits, allowed for, how allowed, and how paid.

1939. ✓ It is the intent and spirit of this act to benefit the members of organized fire departments, whether the membership be a paid one or merely volunteer. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. ✓ When a volunteer fire department is abolished by ordinance an expulsion of the particular members thereof occurs just as effectively as if each volunteer has been expelled for misconduct or some other reason, so that their election of a treasurer is invalid, and the treasurer elected by the eligible members is entitled to the office. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. ✓ A member of the firemen's relief association has no vested rights in the funds administered by the association. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. ✓ The purpose of the act is to protect the active members injured in service or otherwise within the benefits conferred by the association. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

5127.1. Disability and pension fund.

1939. When a volunteer fire department is abolished by ordinance an expulsion of the particular members thereof occurs just as effectively as if each volunteer has been expelled for misconduct or some other reason, so that their election of a treasurer is invalid, and the treasurer elected by the eligible members is entitled to the office. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

5129. Fire department relief association.

1939. A member of a department abolished by the city government can no longer qualify as an eligible member of the relief association. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. The court will take judicial notice of the association's articles of incorporation on file in the office of the secretary of state concerning the qualifications of members of the association. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. When a volunteer fire department is abolished by ordinance an expulsion of the particular members thereof occurs just as effectively as if each volunteer has been expelled for misconduct or some other reason, so that their election of a treasurer is invalid, and the treasurer elected by the eligible members is entitled to the office. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. In order to participate in the affairs and enjoy the benefits of the relief association, a person must be a confirmed member of an organized fire department, or, at least, a member of a volunteer department recognized by the city or town council. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. It is the intent and spirit of this act to benefit the members of organized fire departments, whether the membership be a paid one or merely volunteer. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

5130. Annual report of the secretary and treasurer, prescribing qualifications for membership, official bond of the treasurer and examination of books and accounts.

1939. ✓ The court will take judicial notice of the association's articles of incorporation on file in the office of the secretary of state concerning the

qualifications of members of the association. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. A member of a department abolished by the city government can no longer qualify as an eligible member of the relief association. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. In order to participate in the affairs and enjoy the benefits of the relief association, a person must be a confirmed member of an organized fire department, or, at least, a member of a volunteer department recognized by the city or town council. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

5132. Pensions to retired firemen. Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years on the volunteer, paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "Disability and pension fund", a "service pension" in an amount not to exceed one-half of the sum last received by the member as a monthly compensation for his services as an active member of said fire department. Provided, such association may at any time, by a majority vote of the members thereof, increase or decrease the said service pension whenever the financial condition of the association's "disability and pension fund" shall warrant such action; provided that no increase shall be effected as will increase the said "service pension" to an amount in excess of a sum equal to one-half of the monthly active duty compensation last received by the member. In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars (\$75.00) per month. [L. '39, Ch. 73, § 1, amending R. C. M. 1935, § 5132. Approved and in effect February 28, 1939.

Section 4 is partial invalidity saving clause.

Section 5 repeals conflicting laws.

1939. It is the intent and spirit of this act to benefit the members of organized fire departments, whether the membership be a paid one or merely volunteer. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. The purpose of the act is to protect the active members injured in service or otherwise within the benefits conferred by the association. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. A member of the firemen's relief association has no vested rights in the funds administered by the association. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

5133. Disability pension—amount—change—power of association—allowance under workmen's compensation act—volunteer firemen. Each and every fire department relief associa-

tion, organized and existing under the laws of this state, shall pay a "disability pension", out of any moneys in the association's disability and pension fund, to each and every member of said association who has become injured or disabled by reason of sickness or injury contracted or received in line of duty, in an amount not to exceed one-half of the sum last received as a monthly compensation by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. Provided, such association may at any time, by a majority vote of the members thereof, increase or decrease the said "disability pension" whenever the financial condition of the association's "disability and pension fund" shall warrant such action. Provided further that no member of said association shall be entitled to receive said "disability pension" so long as he may be receiving an allowance or award under the provisions of the Montana workmen's compensation act. In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five dollars (\$75.00) per month. [L. '39, Ch. 73, § 2, amending R. C. M. 1935, § 5133. Approved and in effect February 28, 1939.

Section 4 is partial invalidity saving clause.

Section 5 repeals conflicting laws.

5134. Pensions to widows or orphans—amount—change—power of association—marriage of widow—payment to orphans—cessation—volunteer firemen. Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the widow or orphans of a deceased member of said association, who, on the date of his decease, was an active member of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire department and receive a "service pension", as provided by section 1 [5132] of this act, or, prior to his decease, had suffered a sickness or injury in line of duty, and was receiving or was qualified to receive a "disability pension", as provided by section 2 [5133] of this act, out of any money in the relief association's "disability and pension fund", a monthly pension in an amount not to exceed a sum equal to one-half of the monthly compensation last received by such deceased member for his services as an active member of the fire department in the city or town wherein such association has been formed. Provided such association may at any time, by a majority vote of the members thereof, increase or decrease the said pension; provided that no increase shall be effected as

will increase said pension in an amount in excess of a sum equal to one-half of the monthly active duty compensation last received by the deceased member. Provided that said pension shall be paid to the within named widow only so long as she remains unmarried and further provided that a widow of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and receive a "service pension" as provided for by section 1 [5132] of this act; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 2 [5133] of this act. Provided further, that the pension herein provided for shall not be paid to the orphans of a deceased fireman after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five dollars (\$75.00) per month. [L. '39, Ch. 73, § 3, amending R. C. M. 1935, § 5134. Approved and in effect February 28, 1939.]

Section 4 is partial invalidity saving clause.

Section 5 repeals conflicting laws.

1939. The purpose of the act is to protect the active members injured in service or otherwise within the benefits conferred by the association. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. A member of the firemen's relief association has no vested rights in the funds administered by the association. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

5135. Use of disability and pension fund of fire department relief association.

1939. The purpose of the act is to protect the active members injured in service or otherwise within the benefits conferred by the association. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1939. A member of the firemen's relief association has no vested rights in the funds administered by the association. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

5138.1. Firemen—cities of first class—three platoons—eight-hour shifts—days off. The city commission, or other governing body in cities of the first class, shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than eight (8) hours of each consecutive twenty-four hours, except in the event of a conflagration or other similar emergency when such members or any of them may be required to serve so long as the necessity therefor exists. Each member shall be entitled to at least one (1) day off duty out of each

eight-day period of service without loss of compensation. [L. '37, Ch. 15, § 1. Approved and in effect February 10, 1937.]

Section 4 is partial invalidity saving clause.

Section 5 repeals conflicting laws.

Note. Penalty for violation of act, see § 5110.2.

5138.2. Firemen—cities of second class—three platoons—eight-hour shifts—days off. The city council, city commission, or other governing body in cities of the second class, shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than eight (8) hours of each consecutive twenty-four hours, except in the event of a conflagration or other similar emergency when such members or any of them may be required to serve so long as the necessity therefor exists. Each member shall be entitled to at least one (1) day off duty out of each eight-day period of service without loss of compensation. [L. '39, Ch. 136, § 1, amending L. '37, Ch. 200, § 1. Approved and in effect March 9, 1939.]

Section 6 is partial invalidity saving clause.

Section 7 repeals conflicting laws.

Note. Penalty for violation of act, see § 5110.4.

5140. Appointment of chief engineer of fire department—his powers and duties.

1939. Section 5116.1, when read in connection with section 5140, would seem clearly to imply that a city government can abolish its volunteer department when in its judgment a paid department should be established in lieu thereof. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

CHAPTER 393

PARKS AND PLAYGROUNDS—BOARD OF PARK COMMISSIONERS

Section

- 5161. Park commissioners—creation of board—personnel—appointment—qualifications—terms of office—nature of board—oath—organization—officers—duties—records and reports.
- 5166.1. Playgrounds—operation—cities and schools districts—cooperation—buildings—equipment.
- 5166.2. Same—operation—Independently or in cooperation.
- 5166.3. Same—donations—power to accept—operation—instructors—custody of property.
- 5166.4. Same—school buildings—use—powers of state board of education.
- 5166.5. Same—use of school facilities—secondary to educational purposes.

5161. Park commissioners—creation of board—personnel—appointment—qualifications—terms of office—nature of board—oath—organization—officers—duties—

records and reports. There may be created in all cities of the first and second class a board of park commissioners, whether such cities be a council form of government or city manager form, which shall be composed of the mayor or city manager of the city and six other persons, to be appointed by the mayor or city manager of the city with the approval of the city council. The six persons so to be appointed shall have the same qualifications for the office of park commissioners as are required by section 5004 of this code [R. C. M., 1935], for the office of mayor or city manager. The term of office of each park commissioner shall be two years from and after the first day of May of the year in which he is appointed, and until his successor is appointed and qualified, save and except that three of the commissioners first appointed shall hold office for the period of one year from and after the first day of May, 1940, and until their successors are appointed and qualified. Such board of park commissioners shall constitute a department of the city government with the powers in this act provided. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe the oath provided by section 430 of these codes, [R. C. M., 1935] which oath shall be filed in the office of the city clerk.

On the first Monday in May in each year, said board of park commissioners shall meet and organize by electing one of their number president, and one of their number vice-president, who shall hold their offices respectively for the term of one year. The president, and in his absence, the vice-president, shall preside at all meetings of the board, and shall countersign all warrants issued by the board, and perform such other duties as shall be required and directed by the board. The city clerk shall be ex-officio clerk of the board of park commissioners, and shall attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided for that purpose by it, to be called "record of board of park commissioners of the city of.....". It shall be the duty of the city clerk, as such clerk of the board of park commissioners, to keep an accurate account of all transactions of said board separate from other city accounts, and to make and submit in writing to said board at the first meeting in January in each year a report under oath showing in detail all the receipts and disbursements made by the board during the year, which report shall be in duplicate, and after being approved by said board, one of said duplicates shall be filed in the office of the city clerk and one in the office of the city treasurer, and he shall per-

form such other services as the board shall require. In the absence of the clerk at any meeting held by the board, it shall designate one of its number as clerk pro tem. to keep the minutes of said meeting, which minutes shall be delivered to the clerk to be transcribed into the record book of said board. The minutes of said meeting in said record book contained, when approved by the board, shall be prima facie evidence of the matters and things therein recited in any court of this state. [L. '39, Ch. 32, § 1, amending R. C. M. 1935, § 5161. Approved and in effect February 17, 1939.

Section 2 repeals conflicting laws.

5166.1. Playgrounds — operation — cities and schools districts—cooperation—buildings—equipment. Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of said city or town, and any school district, or board thereof, may cooperate for the purpose of operating a program of public recreation and playgrounds; and acquire, equip and maintain land, buildings, and/or other recreational facilities. [L. '39, Ch. 71, § 1. Approved February 28, 1939.

5166.2. Same—operation—independently or in cooperation. Any city, town, school district, or any board thereof, including board of park commissioners, may operate such a program independently or may cooperate in its operation and conduct with any other body authorized hereby to conduct such a program and in any manner upon which they may mutually agree; or it or they may delegate the operation of the program to a board of recreation created by any city, town, school district, or any board thereof, including any board of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all moneys appropriated for the purposes of such program may be expended by such board. [L. '39, Ch. 71, § 2. Approved February 28, 1939.

5166.3. Same—donations—power to accept—operation—instructors—custody of property. Any corporation, board, or body hereinbefore designated, given authority to operate and conduct a recreation program, or given charge of such program, is authorized to accept gifts and bequests in the name or names of the sponsors of said program, as said sponsors may agree, for the benefit of said recreational work, to employ directors and instructors of said recreational work, and to conduct its activities on:

(1) Property under its custody and management;

(2) Other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and

(3) Private property, with the consent of its owners. [L. '39, Ch. 71, § 3. Approved February 28, 1939.

5166.4. Same — school buildings — use — powers of state board of education. In all cases where school property is utilized, the state board of education shall have authority:

(1) To establish minimum qualifications of local recreational directors and instructors; and

(2) To prepare, or cause to be prepared, published and distributed, adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry on said recreational program and to carry out the provisions of this act. [L. '39, Ch. 71, § 4. Approved February 28, 1939.

5166.5. Same — use of school facilities — secondary to educational purposes. The facilities of any school district operating a recreation program pursuant to the provisions of this act shall be used primarily for the purpose of conducting a regular school curriculum and the use of school facilities for recreational purposes authorized by this act shall be secondary. [L. '39, Ch. 71, § 5. Approved February 28, 1939.

Section 6 repeals conflicting laws.

CHAPTER 396

MUNICIPAL REGULATION OF PLUMBING —PLUMBING LICENSE

5183. Plumbers must procure license.

1935. ✓ Sections 5183-5193, providing for the examination and licensing of plumbers, held not invalid as delegation of legislative power to municipal examining board, nor for failing to provide for review of board's actions. *State v. Stark*, 100 Mont. 365, 52 P. (2d) 890.

CHAPTER 397

TAXATION AND LICENSES

Section

5194. Limitation on amount of tax for municipal purposes—distribution of funds—levy for park purposes.

5199.2. Repealed.

5221. Duty of city clerk and treasurer—poll tax—collection.

6194. Limitation on amount of tax for municipal purposes — distribution of funds — levy for park purposes. The amount of taxes to be assessed and levied for general municipal

or administrative purposes in cities of the first class with a population of thirty-five thousand or over must not exceed one and four-tenths per centum of the assessed value of the taxable property in all cities of the first class, and all other cities and towns must not exceed one and three-fourths per centum on the per centum of the assessed value of the taxable property of the city or town; and the council in each city or town may distribute the money collected into such funds as are prescribed by ordinance; provided, that for the purpose of maintaining public parks, the council in any city or town may assess and levy, in addition to the said levy for general municipal or administrative purposes, not exceeding three mills on the dollar on the per centum of the assessed value of the taxable property of the city or town. [L. '37, Ch. 48, § 1, amending R. C. M. 1935, § 5194. Approved and in effect February 23, 1937.

Section 2 repeals conflicting laws.

5195. Cities and towns may raise money by taxation in excess of levy now permitted, how.

1937. ✓ Cited in *Northern Pacific Ry. Co. v. Lutey*, 104 Mont. 321, 66 P. (2d) 785.

5199.2. Repealed. [L. '39, Ch. 182, § 2. Approved and in effect March 17, 1939. See § 5278.10a.

5214. Collection of taxes—delinquent taxes.

1937. ✓ Cited in *State ex rel. City of Butte v. Healy*, 105 Mont. 227, 70 P. (2d) 437, stating that, though the statute does not so provide, the money collected as city taxes by the county treasurer are collected for the use and benefit of the city, and they should be delivered to the city, and that within a reasonable time, else the county will be held to have retained the funds at its peril.

5219. Road poll-tax.

1937. ✓ City streets are within the exclusive jurisdiction of the city through its council. *State ex rel. City of Butte v. Healy*, 105 Mont. 227, 70 P. (2d) 437.

5221. Duty of city clerk and treasurer — poll tax — collection. The city or town clerk, in making such list, and the city or town treasurer in collecting such tax, have the same powers in reference thereto as the county assessor and county treasurer have in assessing and collecting the poll-tax provided for in sections 2238 to 2252.2, inclusive, of this code. [L. '37, Ch. 47, § 1, amending R. C. M. 1935, § 5221. Approved and in effect February 23, 1937.

Section 2 repeals conflicting laws.

5222. Poll-tax—how expended.

1937. ✓ City streets are within the exclusive jurisdiction of the city through its council. *State ex rel. City of Butte v. Healy*, 105 Mont. 227, 70 P. (2d) 437.

CHAPTER 398

SPECIAL IMPROVEMENT DISTRICTS

Section

5229. Protests against proposed work — time — notice — hearing — when council may overrule — withdrawal of protests.
5245. Interest on assessments — special improvements — maximum rate — how collected.
5249. Form of bonds and warrants — rate of interest — signature — denominations — redemption — call — notice — payment of interest.

5229. Protests against proposed work — time — notice — hearing — when council may overrule — withdrawal of protests. At any time within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work, or against the extent or creation of the district to be assessed, or both. Such protest must be in writing, and be delivered to the clerk of the city or town council or commission, not later than 5 o'clock P. M. of the last day within said fifteen days period, and said clerk shall endorse thereon the date and hour of its receipt by him. At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be so made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that, except as hereinafter provided, when the protest is against the proposed work, and the cost thereof is to be assessed against property fronting thereon, and the city or town council or commission finds that such protest is made by the owners of more than forty per cent of the property fronting on the proposed work, or when the protest is against the proposed work, and the cost thereof is to be assessed upon the property within an extended district, and the city or town council or commission finds that such protest is made by the owners of more than forty per cent of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date when said sufficient protest shall have been received by said clerk of the city or town council or commission; provided, however, that when the improvement proposed is the paving, with necessary incidentals, of not more than one (1) cross block, to connect with streets or avenues already paved for a continuous distance of three (3) blocks or more running a right angle, or substantially so, with the single cross block so proposed to be paved, in such

case the city or town council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface; and provided, too, that in case the improvement is the construction of a sanitary sewer such protest may be overruled by an affirmative vote of a majority of the members of the city or town council or commission; unless such protest is made by the owners of more than seventy-five per cent of the property affected as herein provided, in which event the protest must be sustained as to the construction of such sanitary sewer.

In determining whether or not sufficient protests have been filed on a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered to the same effect as other property in the proposed district. The city or town council or commission may adjourn said hearing from time to time and protestants shall have the right to withdraw protest or protests at any time before final action thereon by the city or town council or commission. [L. '39, Ch. 36, § 1, amending R. C. M. 1935, § 5229. Approved and in effect February 17, 1939.]

Section 2 repeals conflicting laws.

5240. Assessment to pay cost of improvements.

1939. The assessments must necessarily include the interest on the bonds to maturity as an essential part of the costs of making special improvements under this system." State ex rel. Griffith v. City of Shelby, 107 Mont. 571, 87 P. (2d) 183.

1939. Having decided to issue bonds it becomes the duty of the city council to provide a fund sufficient to pay the principal of the bonds, with interest, until maturity by means of a definite number of equal annual assessments. State ex rel. Griffith v. City of Shelby, 107 Mont. 571, 87 P. (2d) 183.

5245. Interest on assessments—special improvements — maximum rate — how collected. Upon all special assessments and taxes, levied and assessed in accordance with any of the provisions of this act, simple interest shall be charged at a rate not exceeding six per cent (6%) per annum, and the treasurer, in collecting such special assessment taxes, if the same are payable in one installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment; and if such assessment be payable in installments the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid. [L. '37, Ch. 51, § 1, amending R. C. M. 1935, § 5245. Approved and in effect February 23, 1937.]

Section 2 repeals conflicting laws.

5249. Form of bonds and warrants—rate of interest — signature— denominations — redemption—call—notice — payment of interest. All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No.....,
United States of America,
State of Montana.
Warrant or . Dollars
(Bond No.....) \$.....
Interest at the rate of.....per cent per annum, payable annually.
Special Improvement District Coupon Warrant or Bond.

....., Montana,
Issued by the City of....., Montana.

The treasurer of the City of....., Montana, will pay to....., or bearer, the sum of.....dollars as authorized by resolution No.....as passed on theday of....., 19....., creating special improvement district No.....for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of....., Montana.

This warrant (or bond) bears interest at the rate of.....per cent per annum from the date of registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of.....in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done, precedent to the

issuance of this warrant (or bond), have been properly done, happened, and been performed, in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the city of....., Montana, relating to the issuance thereof.

(Seal)
Dated at....., Montana, this.....day of....., 19.....
City of....., Montana.

By....., Mayor
....., City Clerk
Registered at the office of the city treasurer of....., Montana, this.....day of....., 19.....
.....
City treasurer.

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest at a rate not exceeding 6 per cent per annum, from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall be signed by the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signature of the mayor and clerk; provided, however, that said coupons may bear the facsimile signature of said officers in the discretion of the city council. Said bonds shall be in denominations of one hundred dollars or fractions or multiples thereof, and may be issued in installments, and may extend over a period not to exceed twenty years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided, that the treasurer shall first pay out of such special improvement district fund annually the interest on all outstanding warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once

in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten days after the date of publication or of service of notice, and on which date, so fixed, interest shall cease. When it is provided by the resolution creating the district that the work be paid for in warrants (or bonds), the city council shall, by resolution, fix the denominations of such warrants (or bonds), which may be of one hundred dollars (\$100.00), or fractions or multiples thereof, the rate of interest, which shall not exceed six per cent per annum, and provide for the payment or redemption of such warrants (or bonds) at a time certain, which time of payment must not exceed twenty (20) years from and after the date of issuance. [L. '37, Ch. 23, § 1, amending R. C. M. 1935, § 5249. Approved and in effect February 17, 1937.]

Section 2 repeals conflicting laws.

1939. The provision of this section making interest payable out of the bond fund in preference to principal does not include interest after maturity of the bonds. State ex rel. Griffith v. City of Shelby, 107 Mont. 571, 87 P. (2d) 183.

1939. The holder of a matured bond, standing next in the order for payment, is entitled to have the principal of her bond paid, where there are sufficient funds in the city treasury for the payment thereof, although insufficient for the payment of interest accrued after maturity on other outstanding and over-due bonds. State ex rel. Griffith v. City of Shelby, 107 Mont. 571, 87 P. (2d) 183.

CHAPTER 399

MUNICIPAL BONDS AND INDEBTEDNESS

Section

- 5278.1. Creation of indebtedness—submission to taxpayers—election—refunding bonds—procedure to issue.
- 5278.6. Petition for election—form—contents—purpose of bonds—separate petitions—circulators—affidavit—city clerk's certificate—number of registered electors—of qualified signers—percentage.
- 5278.10. Who are entitled to vote—registration of electors—notice of close of registration—publication—lists of qualified electors and poll books—preparation—duty of county clerk.
- 5278.10a. Repeals.
- 5278.31. Federal municipal corporation bankruptcy act—cities may avail themselves thereof—ordinance or resolution—contents—procedure.
- 5278.32. Same—indebtedness to state—composition.
- 5278.33. Validation of bond proceedings under this chapter.

5278.1. Creation of indebtedness—submission to taxpayers—election—refunding bonds—procedure to issue. Whenever the council enacts in this state, or hereafter organized under of any city or town having a corporate existence any of the laws thereof, shall deem it necessary to issue bonds for any purpose whatever, under its powers as set forth in any statute or statutes of the state of Montana, or amendments thereto, the question of issuing such bonds shall first be submitted to the qualified electors of such city or town in the manner hereinafter set forth; provided, however, that it shall not be necessary to submit to such electors the question of issuing funding or refunding bonds to fund or refund warrants or bonds issued prior to and outstanding on the 1st day of April, 1937. In order to issue bonds to fund or refund warrants or bonds issued prior to and outstanding on April 1st, 1937, it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be funded or refunded, showing the reason for issuing such bonds and fixing and determining the details thereof, giving notice of the sale thereof in the same manner that notice is required to be given of the sale of bonds authorized at an election, and then following the procedure prescribed in this act for the sale and issuance of such bonds. [L. '37, Ch. 108, § 1, amending R. C. M. 1935, § 5278.1, amended by L. '37, Ch. 12, § 1. Approved and in effect March 15, 1937.]

Section 2 repeals conflicting laws.

5278.6. Petition for election—form—contents—purpose of bonds—separate petitions—circulators—affidavit—city clerk's certificate—number of registered electors—of qualified signers—percentage. No bonds shall be issued by a city or town for any purpose, except to fund or refund warrants or bonds issued prior to and outstanding on April 1, 1937, as authorized in section 5278.1, unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the city or town, and approved, as hereinafter provided, and no such election shall be called unless there has been presented to the city or town council a petition, asking that such election be held and question submitted, signed by not less than twenty per centum (20%) of the qualified electors of the city or town, who are taxpayers upon property within such city or town and whose names appear on the last completed assessment roll for state and county taxes, as taxpayers within such city or town. Every petition for the calling of an election to vote upon the question of issuing bonds shall

plainly and clearly state the purpose or purposes for which it is proposed to issue such bonds, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) petition, if each purpose with an estimate of the amount of bonds to be issued therefor is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets identical in form and fastened together, after being circulated and signed, so as to form a single complete petition before being delivered to the city or town clerk, as hereinafter provided. The petition shall give the street and house number, if any, and the voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating, such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the city or town clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate, under his official signature, which shall set forth:

(1) The total number of persons who are registered electors and whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town.

(2) Which, and how many of the persons whose names are subscribed to such petition, are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town. [L. '37, Ch. 108, § 2, amending R. C. M. 1935, § 5278.6. Approved and in force March 15, 1937.]

Section 3 repeals conflicting laws.

5278.10. Who are entitled to vote—registration of electors—notice of close of registration—publication—lists of qualified electors and poll books—preparation—duty of county clerk. Only such registered electors of the city or town whose names appear upon the last preceding assessment roll for state and county taxes, as taxpayers upon property within the city or town, shall be entitled to vote upon

any proposition of issuing bonds by the city or town. Upon the adoption of the resolution calling for the election the city or town clerk shall notify the county clerk of the date on which the election is to be held and the county clerk must cause to be published in the official newspaper of the city or town, if there be one, and if not in a newspaper circulated generally in the said city or town and published in the county where the said city or town is located, a notice signed by the county clerk stating that registration for such bond election will close at noon on the fifteenth (15th) day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least five (5) days prior to the date when such election books shall be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the qualified electors of such city or town who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes and who are entitled to vote at such election and shall prepare poll books for such election as provided in section 568 of the revised codes of Montana of 1935, and deliver the same to the city or town clerk who shall deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such lists of qualified electors. [L. '39, Ch. 182, § 1, amending R. C. M. 1935, § 5278.10. Approved and in effect March 17, 1939.]

5278.10a. Repeals. That section 5199.2 of the revised codes of Montana of 1935 and all acts and parts of acts in conflict herewith are hereby repealed. [L. '39, Ch. 182, § 2, amending R. C. M. 1935, § 5278.10. Approved and in effect March 17, 1939.]

5278.31. Federal municipal corporation bankruptcy act—cities may avail themselves thereof—ordinance or resolution—contents—procedure. That the state of Montana does hereby consent and exact [enact] that any city or town of the state of Montana, upon and after the adoption by its city council or town council of an ordinance or resolution declaring (1) that it is insolvent or unable to meet its debts as they mature and (2) that it desires to effect a plan for the composition of its debts under the provisions of the "municipal corporation bankruptcy act" of the United States as amended, added to, and now existing, and providing (3) that said city or town shall proceed to the composition of its municipal indebtedness under the provisions of said act, and (4), upon the acceptance in writing of the plan of composition of its municipal indebtedness

proposed by such municipality by creditors of the petitioning municipal corporation owning not less than the percentage thereof in amount of the municipal securities affected or to be affected by the proposed plan of composition, as provided in said act, shall have the right and power to submit itself and such proposed plan of composition to the jurisdiction of the bankruptcy court having jurisdiction of such matter and to be governed by the proceedings, orders and decrees of said court in the manner and extent, and as provided by said act, and to compose and to enter into, submit itself to, and to perform, the plan of composition in the manner prescribed and required by said act and the orders and decrees of said court thereunder and as affected thereby. [L. '39, Ch. 114, § 1. Approved and in effect March 3, 1939.

5278.32. Same—indebtedness to state—composition. Any such city or town shall have the power to do all things, and to comply with all orders and decrees, contemplated by said municipal corporation bankruptcy act and to issue its bonds and other securities for the carrying out and consummation of the composition of its debts as provided and contemplated by said act, and as required by the orders and decrees of said court. The state of Montana or any department or agency thereof holding any of the securities of any such city or town shall have the power to consent to any plan of composition of the indebtedness of any such city or town by the board having custody of and control over any such securities or by any other official or officials having such custody and control. [L. '39, Ch. 114, § 2. Approved and in effect March 3, 1939.

Section 3 is partial invalidity saving clause.

Section 5 repeals conflicting laws.

5278.33. Validation of bond proceedings under this chapter. Where prior to the enactment of this chapter proceedings for the issue and sale of bonds by any city or town in this state under its powers as set forth in any statute or statutes of the state of Montana have been commenced or completed in accordance with the provisions of chapter 399 of the political code of the revised codes of Montana, 1935, such proceedings shall be held valid and sufficient and the completion of such proceedings under the authority of this chapter is hereby authorized and said proceedings when completed shall be of the same force and effect as if the provisions of this chapter had been in effect when said proceedings were commenced. [L. '37, Ch. 12, § 2. Approved and in effect February 10, 1937.

Section 3 repeals conflicting laws.

CHAPTER 399A

THE REVENUE BOND REFINANCING ACT OF 1937

Section	
5288.1.	Short title.
5288.2.	Definitions.
5288.3.	Grant of power.
5288.4.	Procedure for authorization.
5288.5.	Terms of refunding bonds—to be treated as negotiable instruments.
5288.6.	Validity of refunding bonds—change of municipal officers — authorization — validity—effect of proceedings for improving enterprise—bonds deemed valid.
5288.7.	Sale or exchange of refunding bonds—for what bonds may be exchanged—public or private sale—price.
5288.8.	Security of the refunding bonds — special obligations—lien upon revenues of enterprise—governing body may pledge revenues — additional security — recitals in bonds—equality of bonds within issue—existing agreements—creation of debt not authorized.
5288.9.	Refunding bonds not debts—no recourse against general fund of municipality—recitals.
5288.10.	Refunding bonds exempt from taxation.
5288.11.	Fiscal agent.
5288.12.	Duties of municipality and officers — punctual payment—management of enterprise — rates — expenses — interest and principal—terms of resolution—compliance — other obligations—maintenance of enterprise—preservation of security—claims for labor, etc.—payment—application of revenues—books and records.
5288.13.	Additional powers and duties.
5288.14.	Right to receivership upon default—application—appointment—powers and duties — termination of receivership — direction by court—jurisdiction.
5288.15.	Remedies of refunding bondholders—equal benefit—law or equity—accounting—injunction—suit on bonds—remedies cumulative — default — waiver — right impaired by delay—repeated exercise of right — restoration to former positions and rights.
5288.16.	Construction of act — authority — powers cumulative—act remedial.
5288.17.	Act not affected if in part unconstitutional.

5288.1. Short title. This act may be cited as "The Revenue Bond Refinancing Act of 1937." [L. '37, Ch. 121, § 1. Approved and in effect March 15, 1937.

5288.2. Definitions. The following terms wherever used or referred to in this act shall have the following meaning, unless a different meaning appears from the context:

(a) The term "municipality" shall mean any city or town of this state or the state water conservation board;

(b) The term "governing body", in the case of a city or town, shall mean the council, commission, or other body, board, officer or

officers having charge of the finances thereof, and, in the case of the state water conservation board, shall mean the board itself;

(c) The term "law" shall mean any act or statute, general, special or local, of this state, including, without being limited to, the charter of any municipality;

(d) The term "enterprise" shall mean any work, undertaking, or project which the municipality is or may hereafter be authorized to construct and from which the municipality has heretofore derived or may hereafter derive revenues, for the refinancing, or the refinancing and improving of which enterprise, refunding bonds are issued under this act, and such enterprise shall include all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto;

(e) The term "federal agency" shall include the United States of America, the president of the United States of America, the federal emergency administrator of public works, Reconstruction Finance Corporation, or any agency, instrumentality or corporation of the United States of America, which has heretofore been or may hereafter be designated or created by or pursuant to any act or acts or joint resolution or joint resolutions of the congress of the United States of America, or which may be owned or controlled, directly or indirectly, by the United States of America;

(f) The term "improving" shall mean reconstructing, replacing, extending, repairing, bettering, equipment, developing, embellishing or improving or any one or more of all of the foregoing;

(g) The term "refunding bonds" shall mean notes, bonds, certificates or other obligations of a municipality issued pursuant to this act, or pursuant to any other law, as supplemented by, or in conjunction with this act;

(h) The term "refinancing" shall mean funding, refunding, paying or discharging, by means of refunding bonds or the proceeds received from the sale thereof, all or any part of any notes, bonds, or other obligations heretofore or hereafter issued to finance or to aid in financing the acquisition, construction or improving of an enterprise and payable solely from all or any part of the revenues thereof, including interest thereon in arrears or about to become due, whether or not represented by coupons or interest certificates;

(i) The term "revenues" shall mean all fees, tolls, rates, rentals and charges to be levied and collected in connection with and all other income and receipts of whatever kind or

character derived by the municipality from the operation of any enterprise or arising from any enterprise;

(j) The term "holder of bonds" or "bondholder" or any similar term shall mean any person who shall be the bearer of any outstanding refunding bond or refunding bonds registered to bearer or not registered, or the registered owner of any such outstanding bond or bonds which shall at the time be registered other than to bearer;

(k) Words importing the singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations. [L. '37, Ch. 121, § 2. Approved and in effect March 15, 1937.]

5288.3. Grant of power. Any municipality shall have power and is hereby authorized to refinance, or to refinance and improve, any enterprise, and for such purpose or purposes to borrow money and issue refunding bonds from time to time. [L. '37, Ch. 121, § 3. Approved and in effect March 15, 1937.]

5288.4. Procedure for authorization. The refunding bonds shall be authorized by resolution or resolutions of the governing body of the municipality. Such resolutions may be adopted at a regular or special meeting and at the same meeting at which they are introduced by a majority of all the members of the governing body then in office. Such resolution or resolutions shall take effect immediately upon the adoption thereof. No other proceedings or procedure of any character whatever shall be required for the issuance of refunding bonds by the municipality. [L. '37, Ch. 121, § 4. Approved and in effect March 15, 1937.]

5288.5. Terms of refunding bonds—to be treated as negotiable instruments. The refunding bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, nor in any event exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds, or other obligations refinanced thereby, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without a premium, may be declared or become due before the maturity date thereof, may provide

for the replacement of mutilated, destroyed, stolen, or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants, as may be provided by resolution or resolutions of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes. [L. '37, Ch. 121, § 5. Approved and in effect March 15, 1937.]

5288.6. Validity of refunding bonds—change of municipal officers—authorization—validity—effect of proceedings for improving enterprise—bonds deemed valid. Refunding bonds bearing the signatures of officers of the municipality in office on the date of the signing thereof shall be valid and binding obligations of the municipality for all purpose [purposes], notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be officers of the municipality, the same as if such persons had continued to be officers of the municipality until after the delivery thereof. The validity of the authorization and issuance of the refunding bonds shall not be dependent on or affected in any way by proceedings taken for the improving of any enterprise for the refinancing and improving of which the refunding bonds are to be issued, or by contracts made in connection with the improving of any such enterprise. Any resolution authorizing refunding bonds may provide that any such refunding bond may contain a recital that such refunding bond is issued pursuant to this act, and any refunding bond containing such recital under authority of any such resolution shall be conclusively deemed to be valid and to have been issued in conformity with the provisions of this act. [L. '37, Ch. 121, § 6. Approved and in effect March 15, 1937.]

5288.7. Sale or exchange of refunding bonds—for what bonds may be exchanged—public or private sale—price. 1. The refunding bonds may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in installments at different times or at one time. The refunding bonds may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds, certificates or other obligations to be refinanced thereby.

2. If the governing body determines to exchange any refunding bonds, such refunding bonds may be exchanged privately for and in payment and discharge of any of the outstanding notes, bonds or other obligations of the municipality issued to finance or to aid in financing the acquisition, the construction, the improving, the refinancing, or the improving and refinancing, of an enterprise. The refunding bonds may be exchanged for a like or greater principal amount of such notes, bonds or other obligations of the municipality, except that the principal amount of the refunding bonds may exceed the principal amount of such outstanding notes, bonds, or other obligations to the extent necessary or advisable, in the discretion of the governing body, to fund interest in arrears or about to become due. The holder or holders of such outstanding notes, bonds, or other obligations need not pay accrued interest on the refunding bonds to be delivered in exchange therefor if and to the extent that interest is due or accrued and unpaid on such outstanding notes, bonds, or other obligations to be surrendered.

3. If the governing body determines to sell any refunding bonds, such refunding bonds shall be sold at not less than par at public or private sale in such manner and upon such terms as the governing body shall deem best for the interests of the municipality. [L. '37, Ch. 121, § 7. Approved and in effect March 15, 1937.]

5288.8. Security of the refunding bonds—special obligations—lien upon revenues of enterprise—governing body may pledge revenues—additional security—recitals in bonds—equality of bonds within issue—existing agreements—creation of debt not authorized. 1. The refunding bonds shall be special obligations of the municipality and shall be payable from and secured by a lien upon the revenues of the enterprise, as shall be more fully described in the resolution or resolutions of the governing body authorizing the issuance of the refunding bonds, and, subject to the constitution of the state of Montana, and to the prior or superior rights of any person, any municipality shall have power by resolution of its governing body to pledge and assign for the security of the refunding bonds all or any part of the gross or the net revenues of such enterprise.

2. As additional security for any issue of refunding bonds hereunder, or any part thereof, any municipality shall have power, and is hereby authorized, by resolution of its governing body to confer upon the holders of the refunding bonds all rights, powers and remedies which said holders would be entitled

to if they were the owners and had possession of the notes, bonds or other obligations for the refinancing of which such refunding bonds shall have been issued including, but not limited to, the preservation of the lien of such notes, bonds or other obligations without extinguishment, impairment or diminution thereof. In the event any municipality exercises the power conferred by this paragraph, (a) each refunding bond shall contain a recital to the effect that the holder thereof has been granted the additional security provided by this paragraph and (b) each note, bond, certificate or other obligation of the municipality to be refinanced by any such refunding bonds, shall be kept intact and shall not be cancelled or destroyed until the refunding bonds, and interest thereon, have been finally paid and discharged but shall be stamped with a legend to the effect that such note, bond, certificate or other obligation has been refunded pursuant to the revenue bond refinancing act of 1937.

3. All refunding bonds of the same issue shall be equally and ratably secured, without priority by reason of number, date of bonds, of sale, of execution or of delivery, by a lien upon the revenues of the enterprise in accordance with the provisions of this section and the resolution or resolutions authorizing the issuance of such refunding bonds.

4. Nothing in this section or in any other sections of this act shall be deemed in any way to alter the terms of any agreements made with the holders of any outstanding notes, bonds, or other obligations of the municipality or to authorize the municipality to alter the terms of any such agreements, or to impair, or to authorize the municipality to impair, the rights and remedies of any creditors of the municipality.

5. Nothing in this section or in any other section of this act shall be deemed in any way to authorize any municipality to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a bond or debt within the meaning of any provisions, limitation, or restriction of the constitution relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt. [L. '37, Ch. 121, § 8. Approved and in effect March 15, 1937.]

5288.9. Refunding bonds not debts—no recourse against general fund of municipality—recitals. 1. No recourse shall be had for the payment of the refunding bonds, or interest thereon, or any part thereof, against the general fund of any municipality, nor shall the

credit or taxing power of any municipality be deemed to be pledged thereto.

2. The refunding bonds, and interest thereon, shall not be a debt of the municipality, nor a charge, lien or encumbrance, legal or equitable, upon any property of the municipality, or upon any income, receipts, or revenues of the municipality other than such of the revenues of the enterprise as shall have been pledged to the payment thereof, and every refunding bond shall recite in substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that the municipality is under no obligation to pay the same, except from said revenues. [L. '37, Ch. 121, § 9. Approved and in effect March 15, 1937.]

5288.10. Refunding bonds exempt from taxation. The refunding bonds and the income therefrom shall be exempt from taxation, except inheritance, estate and transfer taxes. [L. '37, Ch. 121, § 10. Approved and in effect March 15, 1937.]

5288.11. Fiscal agent. Any municipality shall have power in connection with the issuance of refunding bonds to appoint a fiscal agent to provide for the powers, duties and functions and compensations of such fiscal agent, to limit the liabilities of such fiscal agent to prescribe a method for the resignation, removal, merger or consolidation of such fiscal agent and the appointment of a successor fiscal agent and the transfer of rights and properties to such successor fiscal agent. [L. '37, Ch. 121, § 11. Approved and in effect March 15, 1937.]

5288.12. Duties of municipality and officers—punctual payment—management of enterprise—rates—expenses—interest and principal—terms of resolution—compliance—other obligations—maintenance of enterprise—preservation of security—claims for labor, etc.—payment—application of revenues—books and records. 1. In order that the payment of the refunding bonds, and interest thereon, shall be adequately secured, any municipality issuing refunding bonds pursuant to this act and the proper officers, agents and employees thereof, are hereby directed, and it shall be the mandatory duty of such officers, agents and employees under this act, and it shall further be of the essence of the contract of such municipality with the bondholders, at all times:

(a) To pay or cause to be paid punctually the principal of every refunding bond, and the interest thereon, on the date or dates and at the place or places and in the manner and out of the funds mentioned in such refunding

bonds and in the coupons thereto appertaining and in accordance with the resolution authorizing their issuance;

(b) To operate the enterprise in an efficient and economical manner and to establish, levy, maintain and collect such fees, tolls, rentals, rates and other charges in connection therewith as may be necessary or proper, which said fees, tolls, rates, rentals and other charges shall be at least sufficient after making due and reasonable allowances for contingencies and for a margin of error in the estimates;

(1) To pay all current expenses of operation, maintenance and repair of such enterprise, (2) to pay the interest on and principal of the refunding bonds as the same shall become due and payable, (3) to comply in all respects with the terms of the resolution or resolutions authorizing the issuance of refunding bonds or any other contract or agreement with the holders of the refunding bonds, and (4) to meet any other obligations of the municipality which are charges, liens, or encumbrances upon the revenues of such enterprise;

(c) To operate, maintain, preserve and keep, or cause to be operated, maintained, preserved and kept, the enterprise and every part and parcel thereof, in good repair, working order and condition;

(d) To preserve and protect the security of the refunding bonds and the rights of the holders thereof, and to warrant and defend such rights against all claims and demands of all persons whomsoever;

(e) To pay and discharge, or cause to be paid or discharged any and all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a lien or charge upon the revenues or any part thereof, prior or superior to the lien of the refunding bonds, or which might impair the security of the refunding bonds, to the end that the priority and security of the refunding bonds shall be fully preserved and protected;

(f) To hold in trust the revenues pledged to the payment of the refunding bonds for the benefit of the holders of the refunding bonds and to apply such revenues only as provided by the resolution or resolutions authorizing the issuance of the refunding bonds, or if such resolution or resolutions shall thereafter be modified in the manner provided therein or herein, only as provided in such resolution or resolutions as modified;

(g) To keep proper books of record and accounts of the enterprise (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the enterprise or any part

thereof, and which, together with all other books and papers of the municipality, shall at all times be subject to the inspection of the holder or holders of not less than ten per cent of the refunding bonds then outstanding or his or their representatives duly authorized in writing.

2. None of the foregoing duties shall be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise. [L. '37, Ch. 121, § 12. Approved and in effect March 15, 1937.]

5288.13. Additional powers and duties. 1. The governing body of any municipality shall have power, in addition to the other powers conferred by this act, to insert provisions in any resolution authorizing the issuance of refunding bonds, which shall be a part of the contract with the holders of the refunding bonds, as to:

(a) Limitations on the purpose to which the proceeds of sale of any issue of refunding bonds, or any notes, bonds or other obligations then or thereafter to be issued to finance the improving of the enterprise, may be applied;

(b) Limitation on the issuance of additional refunding bonds, or additional notes, bonds or other obligations to finance the improving of the enterprise, and on the lien thereof;

(c) Limitation on the right of the municipality or its governing body to restrict and regulate the use of the enterprise;

(d) The amount and kind of insurance to be maintained on the enterprise, and the use and disposition of insurance moneys;

(e) Pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

(f) Covenanting against pledging all or any part of the revenues of the enterprise to which its right then exists or the rights to which may thereafter come into existence;

(g) Events of default and terms and conditions upon which any or all of the refunding bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(h) The rights, liabilities, powers and duties arising upon the breach by it of any covenants, conditions or obligations;

(i) The vesting in a trustee or trustees the right to enforce any covenants made to secure, to pay, or in relation to the refunding bonds, as to the powers and duties of such trustee or trustees, and the limitation of liabilities there-

of, and as to the terms and conditions upon which the holders of the refunding bonds or any proportion or percentage of them may enforce any covenants made under this act or duties imposed hereby;

(j) A procedure by which the terms of any resolution authorizing refunding bonds, or any other contract with bondholders, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated and as to the amount of refunding bonds the holders of which must consent thereto and the manner in which such consent may be given;

(k) The execution of all instruments necessary or convenient in the exercise of the powers granted by this act or in the performance of the duties of the municipality and the officers, agents and employees thereof;

(L) Refraining from pledging or in any manner whatever claiming or taking the benefit or advantage of any stay or extension law whenever enacted, nor at any time hereafter in force, which may affect the duties or covenants of the municipality in relation to the refunding bonds, or the performance thereof, or the lien of such refunding bonds;

(m) The purchase out of any funds available therefor, including but not limited to the proceeds of refunding bonds, of any outstanding notes, bonds or obligations, including but not limited to refunding bonds, and the price or prices at which and the manner in which such purchases may be made;

(n) Any other acts and things as may be necessary or convenient or desirable in order to secure the refunding bonds, or as may tend to make the refunding bonds more marketable.

2. Nothing in this section shall be construed to authorize any municipality to make any covenants, to perform any act or to do anything which shall require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise. [L. '37, Ch. 121, § 13. Approved and in effect March 15, 1937.]

5288.14. Right to receivership upon default — application — appointment — powers and duties—termination of receivership—direction by court—jurisdiction. 1. In the event that the municipality shall default in the payment of the principal or interest on any of the refunding bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the municipality or the governing body or officers, agents or employees thereof shall fail or refuse to comply with the provisions of this act or shall default in any agreement made

with the holders of the refunding bonds, any holder or holders of refunding bonds, or trustee therefor, shall have the right to apply in an appropriate judicial proceeding to the district court, or any court of competent jurisdiction, for the appointment of a receiver of the enterprise, whether or not all refunding bonds have been declared due and payable and whether or not such holder, or trustee therefor, is seeking or has sought to enforce any other right, or exercise any remedy in connection with such refunding bonds. Upon such application the district court may appoint, and if the application is made by the holders of twenty-five per centum in principal amount of such refunding bonds then outstanding, or any trustee for holders of such refunding bonds in such principal amount, shall appoint a receiver of the enterprise.

2. The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the enterprise and each and every part thereof and may exclude the municipality, its governing body, officers, agents, and employees and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage and control the same and each and every part thereof, and, in the name of the municipality or otherwise, as the receiver may deem best, and shall exercise all the rights and powers of the municipality with respect to the enterprise as the municipality itself might do. Such receiver shall maintain, restore, insure and keep insured, the enterprise, and from time to time shall make all such necessary or proper repairs as to such receiver may seem expedient and shall establish, levy, maintain and collect such fees, tolls, rentals, and other charges in connection with the enterprise as such receiver may deem necessary or proper and reasonable, and shall collect and receive all revenue and shall deposit the same in a separate account and apply such revenues so collected and received in such manner as the court shall direct.

3. Whenever all that is due upon the refunding bonds, and interest thereon, and upon any other notes, bonds, or other obligations, and interest thereon, having a charge, lien, or encumbrance on the revenues of the enterprise and under any of the terms of any covenants or agreements with bondholders shall have been paid or deposited as provided therein, and all defaults shall have been cured and made good, the court may in its discretion, and after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the enterprise to the municipality, the same right of the holders of the refunding bonds to secure the appoint-

ment of a receiver to exist upon any subsequent default as hereinabove provided.

4. Such receiver shall in the performance of the powers hereinabove conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth herein. [L. '37, Ch. 121, § 14. Approved and in effect March 15, 1937.]

5288.15. Remedies of refunding bondholders—equal benefit—law or equity—accounting—injunction—suit on bonds—remedies cumulative—default—waiver—right impaired by delay—repeated exercise of right—restoration to former positions and rights. 1. Subject to any contractual limitations binding upon the holders of any issue or refunding bonds, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to the specified proportion of [or] percentage of such holders, any holder of refunding bonds, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of refunding bonds similarly situated:

(a) By mandamus or other suit, action or proceedings at law or in equity to enforce his rights against the municipality and its governing body and any of its officers, agents and employees and to require and compel such municipality or such governing body or any such officers, agents or employees to perform and carry out its and their duties and obligations under this act and its and their covenants and agreements with bondholders;

(b) By action or suit in equity to require the municipality and the governing body thereof to account as if they were the trustee of an express trust;

(c) By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(d) Bring suit upon the refunding bonds.

2. No remedy conferred by this act upon any holder of refunding bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by this act or by any other law. No waiver

of any default or breach of duty or contract, whether by any holder of refunding bonds, or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy, conferred upon the holders of refunding bonds, may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to the holder of the refunding bonds, or any trustee therefor, then and in every such case the municipality and such holder or trustee, shall be restored to their former positions and rights and remedies as if no such suit, action or proceeding had been brought or taken. [L. '37, Ch. 121, § 15. Approved and in effect March 15, 1937.]

5288.16. Construction of act—authority—powers cumulative—act remedial. This act constitutes full and complete authority for the issuance of refunding bonds. No procedure or proceedings, publications, notices, consents, approvals, orders, acts or things by any governing body of any municipality, or any board, officer, commission, department, agency or instrumentality of the state or any municipality shall be required to issue any refunding bonds or to do any act or perform any thing under this act, except as may be prescribed in this act. The powers conferred by this act shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this act shall not affect, the powers conferred by any other law. This act is remedial in nature and shall be liberally construed. [L. '37, Ch. 121, § 16. Approved and in effect March 15, 1937.]

5288.17. Act not affected if in part unconstitutional. If any section, clause, sentence, paragraph, part or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section, clause, sentence, paragraph, part or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections, clauses, sentences, paragraphs, parts or provisions may be found invalid by any court. [L. '37, Ch. 121, § 17. Approved and in effect March 15, 1937.]

CHAPTER 399B

MUNICIPAL REVENUE BOND ACT OF 1939 —PUBLIC SERVICE

Section

- 5288.18. Short title of act.
- 5288.19. Definitions.
- 5288.20. Additional powers of municipalities—items includable in cost of undertaking.
- 5288.21. Authorization of undertaking—form and contents of bonds.
- 5288.22. Covenantants in resolution authorizing issuance of bonds—bondholders' remedy.
- 5288.23. Validity of bonds.
- 5288.24. Lien of bonds.
- 5288.25. Bonds not a general obligation of municipality.
- 5288.26. Undertakings to be self-supporting.
- 5288.27. Use of revenue.
- 5288.28. Consent of another municipality to construct works within its limits.
- 5288.29. Consent of state agencies for construction of works—licenses and permits—supervision of board of health.
- 5288.30. Construction of act—additional powers—other restrictive laws—effect.
- 5288.31. Separability of provisions.

5288.18. Short title of act. This act may be cited as "The Municipal Revenue Bond Act of 1939". [L. '39, Ch. 126, § 1. Approved and in effect March 9, 1939.]

5288.19. Definitions. Whenever used in this act unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall mean any one or a combination of the following: Water, and sewerage systems, together with all parts thereof and appurtenances thereto including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment and disposal works.

(b) The term "municipality" shall include any city or any town, however organized.

(c) The term "governing body" shall include bodies and boards, by whatsoever names they may be known, having charge of the finances and management of a municipality. [L. '39, Ch. 126, § 2. Approved and in effect March 9, 1939.]

5288.20. Additional powers of municipalities—items includable in cost of undertaking. In addition to the powers which it may now have, any municipality shall have power under this act: (a) To construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better or extend any undertaking, within or without the municipality, or partially within or partially without the municipality, and to acquire by gift, purchase, or the exercise of the right of eminent domain, lands or rights in land or water rights in connection therewith, (b) to

operate and maintain any undertaking and furnish the service, facilities and commodities thereof for its own use and for the use of public and private consumers within or without the territorial boundaries of such municipality, (c) to issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking, (d) to prescribe and collect rates, fees, and charges for the services, facilities and commodities furnished by such undertaking, and (e) to pledge to the punctual payment of said bonds and interest thereon an amount of the revenues of such undertaking (including improvements, betterments, or extensions thereto thereafter constructed or acquired) or of any part of such undertaking, sufficient to pay said bonds, and interest as the same shall become due, and to create and maintain reasonable reserves therefor. Such amount may consist of all or any part or portion of such revenue. The governing body of the municipality in determining such cost, may include all costs and estimated costs of the issuance of said bonds, all engineering, inspection, fiscal and legal expenses, and interest which it is estimated will accrue during the construction period and for six months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this act. [L. '39, Ch. 126, § 3. Approved and in effect March 9, 1939.]

5288.21. Authorization of undertaking—form and contents of bonds. The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this act, and bonds may be authorized to be issued under this act by resolution or resolutions of the governing body of the municipality, when authorized by a majority of the taxpayers voting at a special election noticed as provided in section 538 of the revised codes of Montana, 1935, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this act provided and ordered said special election. Said bonds shall bear interest at such rate or rates not exceeding five per centum per annum, payable semi-annually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemp-

tion, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this act. Said bonds and interim receipts or certificates shall be fully negotiable within the meaning of and for all the purposes of the negotiable instruments law. [L. '39, Ch. 126, § 4. Approved and in effect March 9, 1939.]

5288.22. Covenants in resolution authorizing issuance of bonds—bondholders' remedy. Any resolution or resolutions authorizing the issuance of bonds under this act may contain covenants as to (a) the purpose or purposes to which the proceeds of sale of said bonds may be applied and the use and disposition thereof, (b) the use and disposition of the revenue of the undertaking for which said bonds are to be issued, including the creation and maintenance of reserves, (c) the transfer from the general funds of the municipality to the account or accounts of the undertaking, an amount equal to the cost of furnishing such municipality or any of its departments, boards or agencies with the services, facilities and/or commodities of said undertaking, (d) the issuance of other or additional bonds payable from the revenue of said undertaking, (e) the operation and maintenance of such undertaking, (f) the insurance to be carried thereon and the use and disposition of insurance moneys, (g) books of account and the inspection and audit thereof, and (h) the terms and conditions upon which the holders of said bonds or any proportion of them or any trustee therefor shall be entitled to the appointment of a receiver by the district court, which court shall have jurisdiction in such proceedings, and which receiver may enter and take possession of said undertaking, operate and maintain the same, prescribe rates, fees, or charges, subject to the approval of

the public service commission of Montana and collect, receive and apply all revenue thereafter arising therefrom in the same manner as the municipality itself might do. The provisions of this act and any such resolution or resolutions shall be enforceable by any bondholder, by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. [L. '39, Ch. 126, § 5. Approved and in effect March 9, 1939.]

5288.23. Validity of bonds. Said bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. The validity of said bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which said bonds are issued. The resolution authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. [L. '39, Ch. 126, § 6. Approved and in effect March 9, 1939.]

5288.24. Lien of bonds. All bonds of the same issue shall, subject to the prior and superior rights of outstanding bonds, claims or obligations, have a prior and paramount lien on the revenue of the undertaking, for which said bonds have been issued, over and ahead of all bonds of any issue payable from said revenue which may be subsequently issued and over and ahead of any claims or obligations of any nature against said revenue subsequently arising or subsequently incurred. All bonds of the same issue shall be equally and ratably secured without priority by reason of number, date of bonds, date of sale, date of execution, or date of delivery, by a lien on said revenue in accordance with the provisions of this act and the resolution or resolutions authorizing said bonds. [L. '39, Ch. 126, § 7. Approved and in effect March 9, 1939.]

5288.25. Bonds not a general obligation of municipality. No holder or holders of any bonds issued under this act shall ever have the right to compel any exercise of taxing power of the municipality to pay said bonds or the interest thereon. Each bond issued under this act shall recite in substance that said bond, including interest thereon, is payable from the revenue pledged to the payment thereof, and that said bond does not constitute

a debt of the municipality within the meaning of any constitutional or statutory limitation or provision. [L. '39, Ch. 126, § 8. Approved and in effect March 9, 1939.

5288.26. Undertakings to be self-supporting. The governing body of a municipality issuing bonds pursuant to this act shall prescribe and collect reasonable rates, fees or charges for the services, facilities and commodities of such undertaking, and shall revise such rates, fees or charges from time to time whenever necessary so that such undertaking shall be and always remain self-supporting. The rates, fees or charges prescribed shall be such as will produce revenue at least sufficient (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor, and (b) to provide for all expenses of operation and maintenance of such undertaking, including reserves therefor. [L. '39, Ch. 126, § 9. Approved and in effect March 9, 1939.

5288.27. Use of revenue. Any municipality issuing bonds pursuant to this act for the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking shall have the right to appropriate, apply or extend the revenue of such undertaking for the following purposes: (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor, (b) to provide for all expenses of operation and maintenance of such undertaking, including reserves therefor, (c) to pay and discharge notes, bonds, or other obligations and interest thereon, not issued under this act for the payment of which the revenue of such undertaking is or shall have been pledged, charged or encumbered, (d) to pay and discharge notes, bonds or other obligations and interest thereon, which do not constitute a lien, charge or encumbrance on the revenue of such undertaking, which shall have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of such undertaking, and (e) to provide a reserve for betterments to such undertaking. Unless and until adequate provision has been made for the foregoing purposes, no municipality shall have the right to transfer the revenue of such undertaking to its general funds. [L. '39, Ch. 126, § 10. Approved and in effect March 9, 1939.

5288.28. Consent of another municipality to construct works within its limits. No municipality shall construct an undertaking

wholly or partly within the corporate limits of another municipality except with the consent of the governing body of such other municipality. [L. '39, Ch. 126, § 11. Approved and in effect March 9, 1939.

5288.29. Consent of state agencies for construction of works—licenses and permits—supervision of board of health. It shall not be necessary for any municipality proceeding under this act to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission or other like instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain and operate an undertaking, but the supervisory powers and duties of the state board of health shall continue as heretofore. [L. '39, Ch. 126, § 12. Approved and in effect March 9, 1939.

5288.30. Construction of act—additional powers—other restrictive laws—effect. The powers conferred in this act shall be in addition and supplemental to the powers conferred by any other general, special or local law. The undertaking may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this act for said purposes, notwithstanding that any general, special or local law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like undertaking, or the issuance of bonds for like purposes, and without regard to the requirements, restrictions, limitations or other provisions contained in any other general, special or local law, including, but not limited to, any requirement for the approval by the voters of any municipality. Insofar as the provisions of this act are inconsistent with the provisions of any other general, special, or local law, the provisions of this act shall be controlling. [L. '39, Ch. 126, § 13. Approved and in effect March 9, 1939.

5288.31. Separability of provisions. If any provision of this act, or the application of such provision to any person, body, or circumstance shall be held invalid, the remainder of this act, or the application of such provision to persons, bodies, or circumstances other than those as to which it is held invalid, shall not be affected thereby. [L. '39, Ch. 126, § 14. Approved and in effect March 9, 1939.

Section 15 repeals conflicting laws.

CHAPTER 404

HOUSING AUTHORITIES LAW—COOPERATION OF CITIES AND TOWNS — INVESTMENTS IN SECURITIES OF HOME OWNERS' LOAN CORPORATION AND INSTITUTIONS ORGANIZED UNDER NATIONAL HOUSING ACT

Section

5309.35. Investment by fiduciaries home owners' loan corporation bonds authorized—banks—insurance and building loan companies.

5309.1. Short title.

1939.✓ The decisions of the highest courts of other states having constitutional provisions similar to those of Montana are of controlling effect on the courts of this state when passing on the validity of similar laws enacted in this state. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1939.✓ Although the title of the act indicated that it was the intention of the legislature to exempt the property of the housing authority from state and local taxation there was no such exemption in the body of the act, nevertheless such property being essentially public property is exempt by virtue of article 12, section 2, of the constitution of Montana. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

5309.2. Declaration of necessity.

1939.✓ The legislature having found that slum clearance projects are of a public nature such finding will not be interfered with by the courts unless clearly wrong. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1939.✓ The eradication of slums and the substitution in place thereof of safe and sanitary dwellings is well within the definition of "public purpose." *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1939.✓ The legislature having found and declared the necessity in the public interest of the housing provisions enacted in this law, and that the objects thereof were public uses and purposes for which public money may be spent and private property acquired, it is obvious that this law was passed in the exercise of the sovereign police powers inherent in state governments. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1939.✓ This act does not violate Const., Art. 5, § 36, forbidding the delegation of legislative powers to special commissions, etc., in giving the housing authority the power to determine who shall be included in the classification of persons of low income, as that is a matter rather of administration than of legislation. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1939.✓ Placing persons of low income in a special class by themselves as beneficiaries of the operation of this act does not violate Const., Art. 5, § 26, forbidding class legislation, since the legislature has a broad discretion in making classifications and it is to be presumed that it acted on legitimate grounds of distinction in so doing. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

5309.9. Powers of authority.

1939.✓ A contract that a city agree to eliminate unsafe and unsanitary dwellings in the city to an extent at least equal to the number of new dwelling units to be erected by the housing authority, and to cooperate generally in the program of low-cost housing or slum clearance was held valid in *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

5309.11. Eminent domain.

1939.✓ Housing projects, being for a public use, granting to the housing authority the right of eminent domain did not violate either article 3, section 14, or article 15, section 9, of the state constitution. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

5309.14. Types of bonds.

1939.✓ Any possibility of contravention by this act of Art. 13, §§ 1, 2, 4, or 6, of the state constitution, concerning particular limitations with regard to public indebtedness, is foreclosed by the specific language of subsection (b) of the above section. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

5309.23. Contracts with federal government.

1939.✓ Cited in *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656, holding that the housing authority has power to determine who shall be classified as "persons of low income."

5309.28. Declaration of necessity.

1939.✓ The decisions of the highest courts of other states having constitutional provisions similar to those of Montana are of controlling effect on the courts of this state when passing on the validity of similar laws enacted in this state. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1939.✓ The legislature having found and declared the necessity in the public interest of the housing provisions enacted in this law, and that the objects thereof were public uses and purposes for which public money may be spent and private property acquired, it is obvious that this law was passed in the exercise of the sovereign police powers inherent in state governments. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1939.✓ The eradication of slums and the substitution in place thereof of safe and sanitary dwellings is well within the definition of "public purpose." *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1939.✓ The legislature having found that slum clearance projects are of a public nature such finding will not be interfered with by the courts unless clearly wrong. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1939.✓ Placing persons of low income in a special class by themselves as beneficiaries of the operation of this act does not violate Const. Art. 5, § 26, forbidding class legislation, since the legislature has a broad discretion in making classifications and it is to be presumed that it acted on legitimate grounds of distinction in so doing. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

1939.✓ This act does not violate Const., Art. 5, § 36, forbidding the delegation of legislative powers to special commissions, etc., in giving the housing authority the power to determine who shall be included in the classification of persons of low

income, as that is a matter rather of administration than of legislation. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

5309.31. Advances and donations by city and municipality.

1939. ✓ The contention that a city cannot constitutionally loan its credit or make donations to the housing authority to cover administrative expenses and overhead of the authority is untenable for the reason that in so doing the city is merely performing a municipal duty, indirectly through an agency, in protecting its citizens from disease, crime, and immorality by doing away with slums. *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656.

5309.33. Purpose of act.

1939. ✓ Cited in *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656, holding that the housing authority has power to determine who shall be classified as "persons of low income."

5309.35. Investment by fiduciaries home owners' loan corporation bonds authorized—banks—insurance and building loan companies. Notwithstanding any other provision of law, it shall be lawful for any executor, administrator, guardian, or conservator, trustee or other fiduciary to invest the funds or moneys in their custody or possession, eligible for investment, in bonds of the home owners' loan corporation or debentures issued by the federal housing administrator, guaranteed as to principal and interest by the United States government. Notwithstanding other provisions of the law, it shall be lawful for any insurance company, building and loan association, bank, trust company, investment company and other financial institutions operating under the laws of this state to invest the funds or moneys in their custody or possession, eligible for investment, in bonds of the home owners' loan corporation, in debentures issued by the federal housing administrator and in obligations of national mortgage associations. [L. '37, Ch. 24, § 1, amending R. C. M. 1935, § 5309.35. Approved and in effect February 17, 1937.

CHAPTER 408

COMMISSION-MANAGER PLAN OF GOVERNMENT

Section

5486. Sewer, water, gas, or other connections—notice to property owners—service and contents—cost of connection—installments—interest.

5486. Sewer, water, gas, or other connections—notice to property owners—service and contents—cost of connection—installments—interest. The director of public service shall have authority to compel the making of sewer, water, gas, and other connections whenever, in view of the contemplated street improve-

ments or as a sanitary regulation, sewer, water, gas, or other connections should in his judgment be constructed. He shall cause written notice of his determination thereof to be given to the owner of each lot or parcel of land to which such connections are to be made, which notice shall state the number and character of connections required. Such notice shall be served by a person, designated by the director of public service, in the manner provided for the service of summons in civil actions. Non-residents of the municipality, or persons who cannot be found, may be served by one publication of such notice in a daily newspaper of general circulation in the municipality, if such there be, and if not, by one publication in a weekly newspaper. The notice shall state the time within which such connections shall be constructed; and if they be not constructed within the said time, the work may be done by the municipality, and the cost thereof, together with a penalty of five per cent., assessed against the lots and lands for which such connections are made; provided, that the city commission may in its discretion order and direct that the cost of making any such connection by the municipality may be assessed without penalty and may be paid in annual installments over a period of not to exceed eight years, together with interest thereon not to exceed six per cent. per annum, payable annually, on the deferred payments. Said assessments shall be certified and collected as other assessments for street improvements. The actual work of making such connections shall be done under such regulations as are provided for by ordinance. [L. '39, Ch. 45, § 1, amending R. C. M. 1935, § 5486. Approved and in effect February 21, 1939.

Section 2 repeals conflicting laws.

CHAPTER 411

THE REVISION OF THE CODES

Section

5531.11. Revised codes of 1935 approved and legalized.

5531.12. Changes and additions approved.

5531.13. Other acts not invalidated.

5531.11. Revised codes of 1935 approved and legalized. That the revised codes of Montana of 1935, in five volumes as compiled, numbered and arranged by the code commissioner appointed by authority of chapter 89 of the laws of the twenty-third legislative assembly of Montana of 1933, and as certified to by said code commissioner are hereby, as to both form and substance, approved, legalized and adopted as the laws of Montana now in force and effect and the same are hereby declared to

constitute the laws of Montana now in force and effect except such laws as may be adopted by the twenty-fifth session of said legislative assembly. [L. '37, Ch. 1, § 1. Approved and in effect January 30, 1937.

1937. Sections 283.1 and 381, being on a parity, must be construed, if possible, so that both may stand. State ex rel. Helena Allied Printing Council v. Mitchell, 105 Mont. 326, 74 P. (2d) 417.

5531.12. Changes and additions approved. All changes made by said code commissioner in the language or arrangement of any law of the state embodied in said codes and all additions of new sections made by said commissioner to said code, are hereby legalized, approved and given validity. [L. '37, Ch. 1, § 2. Approved and in effect January 30, 1937.

5531.13. Other acts not invalidated. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment, which is not included in said revised codes of Montana of 1935; and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, statute, or code section, omitted by said commissioner from said revision. [L. '37, Ch. 1, § 3. Approved and in effect January 30, 1937.

CHAPTER 412

THE PUBLICATION OF THE CODES

Section

5553.8. Distribution of codes—actual cost price to be paid—secretary of state—discretion—further distribution.

5553.8. Distribution of codes—actual cost price to be paid—secretary of state—discretion—further distribution. The secretary of state, upon receipt of said published codes, shall distribute the same, or so many of them as may be necessary, in the following manner, to wit:

To each department of the state government of Montana, one copy.

To each member of the 24th and 25th legislative assemblies, one copy upon the payment to the state of Montana by any member receiving such copy the actual cost price thereof to the state.

To the state law library, two copies.

To the library of congress, two copies.

To the state historical and miscellaneous library, one copy.

To the state law librarian, for the purpose of exchanges with libraries, universities, and other institutions, such number of copies, not to exceed one hundred (100) as may be required by him.

To each of the component institutions of university of Montana, one copy.

To each of the United States district judges for the district of Montana, and to each of the judges of the supreme and district courts of Montana, one copy.

To the county clerk of each county, three copies for the use of the various county officials.

To each county attorney, and to each clerk of the district court, one copy.

The secretary of the state may further distribute the revised codes of Montana, of 1935, at his discretion, to other departments of government not herein enumerated when the same are deemed absolutely necessary, and may exchange new sets for worn out sets when the latter are returned to his office. [L. '37, Ch. 79, § 1, amending R. C. M. 1935, § 5553.8. Approved and in effect March 3, 1937.

Section 2 repeals conflicting laws.

CHAPTER 7 R. C. M. 1921

WAR DEFENSE BONDS

Section

5624-5637. R. C. M. 1921. War defense, seed loans, etc.—defaulted and outlawed—cancellation—authority of secretary of state.

5624-5637 R. C. M. 1921. War defense, seed loans, etc.—defaulted and outlawed—cancellation—authority of secretary of state. The state treasurer and all other state offices or state departments, affected thereby, are hereby authorized to cancel of record, all war defense loans, seed or otherwise, made to or held by the state of Montana, under the provisions of sections 5624-5637 inclusive R. C. M. 1921, which were defaulted, and which have been extinguished by reason of the application of the statute of limitations, or other laws of the state of Montana. [L. '39, Ch. 190, § 1. Approved and in effect March 17, 1939.

Section 2 repeals conflicting laws.

CHAPTER 413

EMPLOYMENT OF SOLDIERS AND SAILORS

Section

5653. Preference of soldiers and sailors in public employment—public works—disabled veterans—when employed—persons excluded—preference of citizens over foreigners—residence—exclusion—remedy—petition to district court—order to show cause—order to comply.

5653. Preference of soldiers and sailors in public employment—public works—disabled veterans—when employed—persons excluded—preference of citizens over foreigners—residence—exclusion—remedy—petition to district court—order to show cause—order to comply. In every public department, and upon all public works of the state of Montana, and of any county and city thereof, honorably discharged Union soldiers and sailors and their widows of the Civil War, the Spanish-American War, the Philippine insurrection, and the late war with Germany and her allies, and any disabled civilian recommended by the state rehabilitation bureau, shall be preferred for appointment and employment; age, loss of limb or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the business capacity, competency and education to discharge the duties of the position involved, and honorably discharged Union soldiers and sailors and their widows of the Civil War, the Spanish-American War, the Philippine insurrection, and the late war with Germany and her allies, who have disabilities admitted by the veterans' administration of the United States to have been incurred in the service in any of said wars, where said disabilities do not interfere with the employment, said disabled veterans shall be given preference before the employment of able-bodied veterans as herein designated; provided, however, that none of the benefits of this act shall accrue to any person who refused to serve on active duty in the military service to which attached, or to take up arms in the defense of the United States; provided, however, that no person, not a citizen of the United States, shall be employed by any state, city or county officer in any capacity if competent American labor is available; and, provided, further, that no person who has not been a resident of Montana for at least one (1) year immediately preceding an appointment shall be entitled to such preference; provided further, that for city or county employment no preference will be granted unless applicant under this act is also a resident of the city or town or county in

which employment is sought. That any person entitled to preference in this section who has applied for any appointment or employment upon public works of the state of Montana or of any county and city thereof, or in any public department of said state and who has been denied said employment or appointment and feels that the spirit of this act has been violated and that he is in fact qualified physically, mentally and possesses business capacity, competency and education to discharge the duties of the position applied for, shall have the right to petition by verified petition the district court of the state of Montana in the county in which the work is to be performed, setting forth the facts in his application, qualifications, competency and his honorable discharge or other qualifications warranting him to preference under this act, and upon the filing of such petition any judge in said court shall forthwith issue an order to show cause to the appointing authority directing said appointing authority to appear in said court at a specified time and place, not less than five (5) nor more than ten (10) days after the filing of said verified petition, to show cause, if any he has, why said veteran or person entitled to preference should not be employed by him and that said district court shall have jurisdiction upon the proper showing to issue its order directing and ordering said appointing authority to comply with this law in giving the preference herein provided. [L. '37, Ch. 66, § 1, amending R. C. M. 1935, § 5653. Approved and in effect February 26, 1937.

Section 2 is partial invalidity saving clause.

Section 3 repeals conflicting laws.

CHAPTER 415A

WORLD WAR ORPHANS' EDUCATION FUND

Section

- 5668a-1. World War orphans' education fund—appropriation—payments from.
- 5668a-2. Benefits—application for—eligibility—board of education—duties.
- 5668a-3. Allotments—limitation.

5668a-1. World War orphans' education fund—appropriation—payments from. That the sum of five thousand dollars (\$5,000.00) is hereby appropriated out of money in the state treasury, not otherwise appropriated, for the purpose of creating and maintaining a "World War orphans' education fund" from which shall be paid in whole or in part the charges for the tuition, matriculation, board, room rent, books and supplies of such of the chil-

dren of those who served in the World War and had a legal residence in this state at the time they were commissioned, warranted, enlisted, or inducted into the military or naval service of the United States and were either killed in action or died from other causes while in such service between April 6, 1917, and July 2, 1921, as are attending or may attend any of the state institutions of learning during the fiscal years of 1937 and 1938, providing any such child shall have entered such institution while between the ages of sixteen and twenty-one. [L. '37, Ch. 142, § 1. Approved and in force March 16, 1937.]

5668a-2. Benefits—application for—eligibility—board of education—duties. The state board of education shall determine the eligibility of all children who make application for the benefits provided for in this act and said board shall satisfy itself of the attendance of such children at any such institution and the accuracy of the charges submitted to said board by the authorities of any such institution on account of attendance thereof of any such children. [L. '37, Ch. 142, § 2. Approved and in effect March 16, 1937.]

5668a-3. Allotments—limitation. Said board shall determine the amount to be allotted to any such child, but in no event shall more than two hundred and fifty dollars (\$250.00) be allotted to any such child in any fiscal year and the sums allotted [allotted] shall be paid direct to the institution, upon due presentation of a claim therefor bearing the approval of the state board of education endorsed thereon. [L. '37, Ch. 142, § 3. Approved and in effect March 16, 1937.]

CHAPTER 416

BONDS OF TAXING UNIT OF STATE— PREFERENCE OF AMORTIZATION BONDS —NOTICE OF SALE—FISCAL AGENCIES FOR PAYMENT OF BANKS

5668.42. Statement of preference of amortization bonds to be included in notice of sale.

1937. A subcontractor held liable to a materialman furnishing petroleum products to the subcontractor's truck drivers where the subcontractor deducted the price from the truck drivers' wages. *H. Earl Clack Co. v. Staunton*, 105 Mont. 375, 72 P. (2d) 1022.

CHAPTER 416A

VALIDITY OF BONDS

Section

- 5668.13a. Validity of bonds—determination by attorney general—submission of proceeding.
5668.13b. Same—same—duty of attorney general.
5668.13c. Same—action to test validity—limitations.

Section

- 5668.13d. Same—purpose of act—partial invalidity saving clause.
5668.13e. Same—effective date of act—application.
5668.13f. Validation of bonds—short title of act.
5668.13g. Same—definitions.
5668.13h. Same—validation—bonds and proceedings validated—application to pending actions to determine validity.

5668.13a. Validity of bonds—determination by attorney general—submission of proceeding. The governing body of any school district, county, city or town shall submit a certified copy of all proceedings preliminary to such issue to the attorney general, together with such other proceedings, certificates and records as he may require, and request his report as to examination and validity. [L. '39, Ch. 139, § 1. Approved March 9, 1939.]

5668.13b. Same—same—duty of attorney general. It is hereby made the duty of the attorney general to examine certified copies of all proceedings preliminary to the issuance of bonds by any school district, county, city or town, which may be submitted to him for such examination, and if found regular and valid he shall deliver to the recording officer of such municipality a report of his examination and determination as to the validity of such bonds. A certified copy of such report shall be filed with the officer required by law to register said bonds and a notation thereof shall be entered in the bond register. [L. '39, Ch. 139, § 2. Approved March 9, 1939.]

5668.13c. Same—action to test validity—limitations. No municipal bond of any issue whereof the preliminary proceedings have been submitted to and approved by the attorney general, shall be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance or sale of said bonds, unless an action to contest the validity thereof shall be brought within thirty days after the date of sale. [L. '39, Ch. 139, § 3. Approved March 9, 1939.]

5668.13d. Same—purpose of act—partial invalidity saving clause. This act is intended to improve the marketability of bonds issued by school districts, counties, cities or towns, in order that said bonds may be sold upon the most favorable terms, and if any section, subsection, sentence, clause or phrase is for any reason held unconstitutional such decision shall not affect the validity of the remaining portions of the act, provided, they are sufficient to carry out the purposes as herein expressed. [L. '39, Ch. 139, § 4. Approved March 9, 1939.]

5668.13e. Same—effective date of act—application. This act shall be in full force and effect from and after its passage and ap-

proval, and shall apply to all bonds whether authorized before or after the passage of this act. [L. '39, Ch. 139, § 5. Approved March 9, 1939.

5668.13f. Validation of bonds—short title of act. This act may be cited as “the 1939 bond validating act”. [L. '39, Ch. 164, § 1, amending L. '37, Ch. 6, § 1. Approved and in effect March 15, 1939.

5668.13g. Same—definitions. The following terms, wherever used or referred to in this act, shall have the following meaning:

(a) The term “public body” shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and shall also include the state board of education, the state board of examiners, the state water conservation board, the state highway commission or any other governmental agency of this state.

(b) The term “bonds” shall include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund. [L. '39, Ch. 164, § 2, amending L. '37, Ch. 6, § 2. Approved and in effect March 15, 1939.

5668.13h. Same — validation — bonds and proceedings validated—application to pending actions to determine validity. All bonds heretofore issued for any of the purposes for which bonds may be issued by any public body of this state and all proceedings heretofore taken for the authorization and issuance of bonds by such public body, and the sale, exchange, execution and delivery thereof are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery; and bonds of such public bodies, whether issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such public body, provided, however, that the provisions

of this act shall not have any application to bonds, debentures or other obligations with regard to which any action or actions have heretofore been instituted and are now pending for the purpose of having the validity thereof determined judicially. [L. '39, Ch. 164, § 3, amending L. '37, Ch. 6, § 3, by adding proviso as to pending actions. Approved and in effect March 15, 1939.

CHAPTER 419

UNIFIED INVESTMENT PLAN FOR PUBLIC FUNDS UNDER JURISDICTION OF STATE

5668.19. Unified investment plan for investment of Montana trust and legacy fund.

1935. ✓ Cited in State ex rel. City of Missoula v. Holmes, 100 Mont. 256, 47 P. (2d) 624, holding sections 173.2 et seq., unconstitutional as to cities and towns.

CHAPTER 420A

PUBLIC AIRPORTS—PROTECTION AND SAFETY

Section

- 5668.40-1. Purpose of act—high structures near public airports—prohibition.
- 5668.40-2. Considerations of factors for safety of operation—height of near-by structures—safety zone—markers and lights on structures.
 - (1) Approach zone—dimensions.
 - (2) Turning zone — restrictions — measurements in determining zone standards.
- 5668.40-3. Enforcement of act—duty and authority.
- 5668.40-4. Permits for structures—applications—restrictions.
- 5668.40-5. Existing structures—condemnation.
- 5668.40-6. Definitions—perimeter of airport.
 - (a) Airport and landing field.
 - (b) Height of buildings and structures.
 - (c) Buildings — structures — natural objects.
- 5668.40-7. Emergency landing strips.
- 5668.40-8. Lights—restrictions.
- 5668.40-9. Enactment under police power.
- 5668.40-10. Violation of act—penalty.

5668.40-1. Purpose of act—high structures near public airports—prohibition. That for the purpose of insuring and securing safety from death or bodily harm and injury for aeronauts and passengers and to protect the property of those engaged in aeronautics and to encourage and promote air travel and transportation of mail, passengers, express and freight by air, it is deemed necessary to eliminate dangerous obstructions of air space in the vicinity of airports or landing fields which may now be or which may hereafter be

acquired, owned, operated or controlled or maintained by the United States, the state of Montana, any county of the state of Montana or any municipality thereof; and to promote the public order, health and safety by providing unobstructed air space for the safe descent, landing, ascent and operation of aircraft while using or utilizing the said public airports in the state of Montana, the height of buildings and other structures in the vicinity of the airports and landing fields in the state of Montana owned, leased, operated, maintained or controlled by any of the public authorities aforesaid, regulated and restricted as hereafter set forth and provided. [L. '39, Ch. 12, § 1. Approved and in effect February 7, 1939.]

5668.40-2. Considerations of factors for safety of operation—height of near-by structures—safety zone—markers and lights on structures. For the purposes set forth in section 1 [5668.40-1] aforesaid and considering among other things:

(a) Requirements and facilities necessary to secure the safe descent, landing, ascent and operation of aircraft using or utilizing the public airports and landing fields aforesaid in the state of Montana;

(b) Hazard from the obstruction of air space in the vicinity of such airports and landing fields;

(c) The relation of the height of buildings and other structures in the vicinity of such airports and landing fields to such hazards;

(d) The area within which height of buildings and other structures may dangerously obstruct air space in the vicinity of public airports and landing fields;

(e) The height of buildings or other structures within such area, which is consistent with the safe use of such airports and landing fields; and

(f) The maintenance and use of obstruction markers and/or lights upon buildings and other structures within the said areas, as safety devices;

The height of buildings and/or other structures is hereby regulated and restricted within a distance of two (2) miles from any such public airport or landing field, measured at a right angle from any side or in a radial line from any corner of the established boundary line thereof, in any and all directions, as follows:

(1) **Approach zone—dimensions.** The trapezoidal portion of the total two mile zone area, 500 feet in width at the boundary of the field or airport, and broadening to a width of 2500 feet two miles distant, the center line of which

shall be a continuation of the center line of each runway at and upon such public airports and landing fields, known as the approach zone, shall have no building, or other structure, natural feature or object of any kind therein, the height of which is more than one-twentieth its distance from the nearest boundary of the airport or landing field.

(2) **Turning zone—restrictions—measurements in determining zone standards.** The remaining portion of the two mile zone area surrounding such public airports and landing fields aforesaid, lying between the approach zones aforesaid, and known as turning zones, shall have no building or other structure, natural feature or object of any kind therein, the height of which is more than one-seventh its distance from the nearest boundary of the airport or landing field.

In measuring distances and heights to determine the zone standard, measurements shall be taken from the nearest side of the building or structure or other object, to the nearest side of the airport or landing field aforesaid, and in the event of airports having boundaries not regular, the nearest established perimeter of such port and field shall be used, as distinguished from actual boundary. [L. '39, Ch. 12, § 2. Approved and in effect February 7, 1939.]

5668.40-3. Enforcement of act—duty and authority. It shall be the duty and authority of every public body or governmental authority owning, operating or maintaining a public airport or landing field, to enforce the provisions of this act as pertains to areas surrounding the particular airport under the control of such body, the same to be enforced in either the court of law or of equity in the state of Montana having jurisdiction of such action, cases to be instituted in the name of the governmental body charged hereunder with the enforcement hereof, and such action may be to prevent the erection, construction or maintenance of such buildings or other structures or parts of buildings or structures, as may exceed the height limits heretofore fixed by this law, or to restrain, correct or abate any such violation, and to prevent the occupancy and use of any part of a building or structure erected in violation of this law. [L. '39, Ch. 12, § 3. Approved and in effect February 7, 1939.]

5668.40-4. Permits for structures—applications—restrictions. It is hereby made the duty of every person, firm or corporation in this state, proposing to erect, establish or maintain any building or other structure, or to grow any natural object that would exceed the height limit established by law when grown, to

proceed to erect, establish or maintain such structure, or plant said natural object, without first making application to the proper officer of the United States, the state of Montana, any county or any municipality (where the proposed erection or action is within two miles of a public airport or landing field as herein set forth), whichever of said bodies has control of the airport or landing field affecting the area, and obtaining from the proper authority a permit for the erection, establishment and maintenance of the structure, building or object proposed; and, no permit shall be granted unless the specifications of the building or other structure or object reveal that the total height shall not exceed the height limits fixed by law for the zone in which the same is to be established; and no permit shall be issued in violation hereof, and any erection or maintenance without a permit which is in violation hereof, shall be ineffectual in law or equity, and shall be and remain a nullity so far as this act is concerned, and the enforcement remedies hereunder. [L. '39, Ch. 12, § 4. Approved and in effect February 7, 1939.]

5668.40-5. Existing structures—condemnation. With respect to any building or other structure existing at the time of the passage of this act, and which does not conform to the regulations of this act in the matter of height, the governmental authority affected thereby, whether the United States, the state of Montana, the several counties, or the several municipalities, in their own right and name, to protect their own airports and landing fields, and to carry out the purposes and provisions of this act, shall have and they are hereby given the right and authority to acquire by purchase, grant, or by condemnation, such estate or interest in any such building or structure or other object, whether natural object or not, and/or in the lands upon which situated, as is necessary to vest full and absolute ownership and control in perpetuity of the space above such land to the extent necessary to correct or abate the height of any such non-conforming building or other structure or object to meet the requirements of this act as to height limitation, within the zones designated. [L. '39, Ch. 12, § 5. Approved and in effect February 7, 1939.]

5668.40-6. Definitions—perimeter of airport. Certain words in this act are defined for the purposes of the act as follows, unless the contrary clearly appears from the context, viz:

(a) **Airport and landing field:** These terms apply to any area of land, water, or both, which is used or is made available for the landing and take-off of aircraft, owned, leased, con-

trolled, operated or maintained by the United States, the state of Montana, any county thereof, or any municipality, or any of the authorized agencies or branches thereof, within the state of Montana.

(b) **Height of buildings and structures:** The height of a building or structure for the purposes of this act is the vertical distance measured from the ground or surface level of the airport or landing field, on the side adjacent to the said building or structure to the level of the highest point of the building or structure.

(c) **Buildings—structures—natural objects.** Any edifice, structure or construction of any kind, character or description, and any object of natural growth, erected, constructed, grown, located or proposed to be erected, constructed, grown or located within the area described in section 2 [5668.40-2] hereof as safety zones, including any edifice, structure, or construction or object within said **restricted zones**, erected, constructed, placed or located on or over land and/or water.

(d) The established perimeter of an airport or landing field, for the purposes of computing all distances and elevations as contemplated by this act, shall be the metes and bounds and elevations along the respective sides thereof as determined by the United States government, the state of Montana, the several counties, the several municipalities, or other public authority owning, leasing, controlling, operating or maintaining such airport or landing field, the determination and definition to be evidenced by plat showing the metes, bounds and elevations to be filed in and among the records of said public authority for official purposes, and subject to inspection and examination at all reasonable times by any interested persons. [L. '39, Ch. 12, § 6. Approved and in effect February 7, 1939.]

5668.40-7. Emergency landing strips. This act shall not apply to any landing fields or strips now established or hereafter established by the civil aeronautics authority of the United States government, known as "emergency landing strips", which do not provide at least 1800 feet of landing area in all directions and which do not provide facilities for the housing, supply and servicing of aircraft. [L. '39, Ch. 12, § 7. Approved and in effect February 7, 1939.]

5668.40-8. Lights—restrictions. No searchlight, beacon light, or other glaring light shall be used, maintained, or operated within said Montana airport zoning areas, so that the same shall reflect, glare, or shine upon or in the direction of the airports. [L. '39, Ch. 12, § 8. Approved and in effect February 7, 1939.]

5668.40-9. Enactment under police power. This act is hereby declared to be enacted as part of the police power of the state of Montana, in the interests of public safety, and which shall be in full force and effect from and after its passage and approval. [L. '39, Ch. 12, § 11. Approved and in effect February 7, 1939.

5668.40-10. Violation of act—penalty. Any person or firm or corporation violating any of the provisions of this law shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than \$500.00 or by imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment. Each such person, firm or corporation shall be deemed guilty of a separate offense for every day during any portion of which any violation of this law is committed, continued or permitted by such person, firm or corporation, and shall be punishable as provided by such law. [L. '39, Ch. 12, § 12. Approved and in effect February 7, 1939.

Section 9 is partial invalidity saving clause.

Section 10 fixes effective date of act.

Section 13 repeals conflicting laws.

CHAPTER 421

PUBLIC WORKS CONTRACTORS' BOND

5668.41. Contractors performing public work to furnish bond—condition.

1937. ✓ The notice required by section 5668.42 may be waived by the contractor, being for his benefit alone, and is waived by voluntarily agreeing to pay the materialmen for supplies furnished to a subcontractor, in the contract with the state and in his surety bond, so that the giving of such notice is unnecessary to entitle a materialman to recover for materials furnished the subcontractor. *H. Earl Clack Co. v. Staunton*, 105 Mont. 375, 72 P. (2d) 1022.

5668.42. Notice to contractor of furnishing provender, material or supplies required.

1937. ✓ The notice required by section 5668.42 may be waived by the contractor, being for his benefit alone, and is waived by voluntarily agreeing to pay the materialmen for supplies furnished to a subcontractor, in the contract with the state and in his surety bond, so that the giving of such notice is unnecessary to entitle a materialman to recover for materials furnished the subcontractor. *H. Earl Clack Co. v. Staunton*, 105 Mont. 375, 72 P. (2d) 1022.

5668.44. Amount and terms of bond—notice of claimant—form—actions on bonds—special provisions in bonds.

1937. ✓ Under this section the statute of limitations on claims based on the contractor's bond begins to run only on affirmative act of acceptance of the public works by the board or commission, etc., as

provided in the section, and mere acquiescence by the board in the engineer's acceptance is not sufficient, whatever such the custom has been in that regard in the past, and whatever its effect might be as between the contractor and the state. *Kirkpatrick v. Douglas*, 104 Mont. 212, 65 P. (2d) 1169. 1937. ✓ Since this section was adopted by the Montana legislature from the Washington statute after it was amended by the Washington legislature so as to provide that the acceptance of a public work by the engineer would not start the running of the statute of limitations, the rule of the amendment applies to the Montana statute. *Kirkpatrick v. Douglas*, 104 Mont. 212, 65 P. (2d) 1169.

1937. ✓ This section does not attempt to prohibit the filing of a claim before the acceptance of the work, and a claim so filed may be made the foundation of an action. *Kirkpatrick v. Douglas*, 104 Mont. 212, 65 P. (2d) 1169.

CHAPTER 421A

INTERGOVERNMENTAL COOPERATION

Section

- 5668.45. Intergovernmental cooperation — senate committee—establishment—personnel.
- 5668.46. House committee — establishment — personnel.
- 5668.47. Governor's committee — establishment — personnel—employees.
- 5668.48. Commission—establishment—personnel.
- 5668.49. Senate and house committees—functions—terms—American legislators' association.
- 5668.50. Commission — functions — council of state governments.
- 5668.51. Same — powers and functions—delegations and committees—appointment—personnel —rules—advisory boards.
- 5668.52. Same — reports — compensation — expenses—employees—other functions.
- 5668.53. Titles of committees and commission.
- 5668.54. Council of state governments.
- 5668.55. Act to be sent to other state governments.

5668.45. Intergovernmental cooperation — senate committee — establishment — personnel. There is hereby established a standing committee of the senate of this state, to be officially known as the senate committee on intergovernmental cooperation, and to consist of five senators. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the senate. In addition to the regular members, the president of the senate shall be ex officio an honorary non-voting member of this committee. [L. '37, Ch. 86, § 1. Approved and in effect March 9, 1937.

5668.46. House committee—establishment—personnel. There is hereby established a similar standing committee of the house of representatives of this state, to be officially known as the house committee on intergovernmental cooperation, and to consist of five mem-

bers of the house of representatives. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the house of representatives. In addition to the regular members, the speaker of the house of representatives shall be ex officio an honorary nonvoting member of this committee. [L. '37, Ch. 86, § 2. Approved and in effect March 9, 1937.

5668.47. Governor's committee — establishment—personnel—employees. There is hereby established a committee of administrative officials and employees of this state to be officially known as the governor's committee on intergovernmental cooperation, and to consist of five members. Its members shall be: The budget director or the corresponding official of this state, ex officio; the attorney general, ex officio; the chief of the staff of the state planning board or the corresponding official of this state, ex officio; and two other administrative officials or employees to be designated by the governor. If there is uncertainty as to the identity of any of the ex officio members of this committee, the governor shall determine the question, and his determination and designation shall be conclusive. The governor shall appoint one of the five members of this committee as its chairman. In addition to the regular members, the governor shall be ex officio an honorary nonvoting member of this committee. [L. '37, Ch. 86, § 3. Approved and in effect March 9, 1937.

5668.48. Commission—establishment — personnel. There is hereby established the Montana commission on intergovernmental cooperation. This commission shall be composed of fifteen regular members, namely:

The five members of the senate committee on intergovernmental cooperation;

The five members of the house committee on intergovernmental cooperation; and

The five members of the governor's committee on intergovernmental cooperation.

The governor, the president of the senate and the speaker of the house of representatives shall be ex officio honorary nonvoting members of this commission. The chairman of the governor's committee on intergovernmental cooperation shall be ex officio chairman of this commission. [L. '37, Ch. 86, § 4. Approved and in effect March 9, 1937.

5668.49. Senate and house committees — functions—terms—American legislators' association. The said standing committee of the senate and the said standing committee of the house of representatives shall function during

the regular sessions of the legislature and also during the interim periods between such sessions; their members shall serve until their successors are designated; and they shall respectively constitute for this state the senate council and house council of the American legislators' association. The incumbency of each administrative member of this commission shall extend until the first day of February next following his appointment, and thereafter until his successor is appointed. [L. '37, Ch. 86, § 5. Approved and in effect March 9, 1937.

5668.50. Commission — functions — council of state governments. It shall be the function of this commission:

(1) To carry forward the participation of this state as a member of the council of state governments.

(2) To encourage and assist the legislative, executive, administrative and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with officials and employees of the other states, of the federal government, and of local units of government.

(3) To endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:

(a) The adoption of compacts;

(b) The enactment of uniform or reciprocal statutes;

(c) The adoption of uniform or reciprocal administrative rules and regulations;

(d) The informal cooperation of governmental offices with one another;

(e) The personal cooperation of governmental officials and employees with one another, individually;

(f) The interchange and clearance of research and information; and

(g) Any other suitable process.

(4) In short, to do all such acts as will, in the opinion of this commission, enable this state to do its part— or more than its part— in forming a more perfect union among the various governments in the United States and in developing the council of state governments for that purpose. [L. '37, Ch. 86, § 6. Approved and in effect March 9, 1937.

5668.51. Same — powers and functions — delegations and committees — appointment — personnel—rules—advisory boards. The commission shall establish such delegations and committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure intergovernmental harmony, and may perform other func-

tions for the commission in obedience to its decisions. Subject to the approval of the commission, the member or members of each such delegation or committee shall be appointed by the chairman of the commission. State officials or employees who are not members of the commission on intergovernmental cooperation may be appointed as members of any such delegation or committee, but private citizens holding no governmental position in this state shall not be eligible. The commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The commission may provide for advisory boards for itself and for its various delegations and committees, and may authorize private citizens to serve on such boards. [L. '37, Ch. 86, § 7. Approved and in effect March 9, 1937.]

5668.52. Same — reports — compensation — expenses — employees — other functions. The commission shall report to the governor and to the legislature within fifteen (15) days after the convening of each regular legislative session, and at such other times as it deems appropriate. Its members and the members of all delegations and committees which it establishes shall serve without compensation for such service, but they shall be paid their necessary expenses in carrying out their obligations under this act. The commission may employ a secretary and a stenographer; it may incur such other expenses as may be necessary for the proper performance of its duties, and it may, by contributions to the council of state governments, participate with other states in

maintaining the said council's district and central secretariats, and its other governmental services. [L. '37, Ch. 86, § 8. Approved and in effect March 9, 1937.]

5668.53. Titles of committees and commission. The committees and the commission established by this act shall be informally known, respectively, as the senate cooperation committee, the house cooperation committee, the governor's cooperation committee and the Montana cooperation commission. [L. '37, Ch. 86, § 9. Approved and in effect March 9, 1937.]

5668.54. Council of state governments. The council of state governments is hereby declared to be a joint governmental agency of this state and of the other states which cooperate through it. [L. '37, Ch. 86, § 10. Approved and in effect March 9, 1937.]

5668.55. Act to be sent to other state governments. The secretary of state shall forthwith communicate the text of this measure to the governor, to the senate, and to the house of representatives, of each of the states of the union, and shall advise each legislature which has not already done so that it is hereby memorialized to enact a law similar to this measure, thus establishing a similar commission, and thus joining with this state in the common cause of reducing the burdens which are imposed upon the citizens of every state by governmental confusion, competition and conflict. [L. '37, Ch. 86, § 11. Approved and in effect March 9, 1937.]

Section 12 is partial invalidity saving clause.

Civil Code

CHAPTER 1

LAW OF THE STATE OF MONTANA

5672. ✓ Common law, when rule of decision.

1939. The "common law of England" as used in this statute "means that body of jurisprudence as applied and modified by the courts of this country up to the time it became a rule of decision in this commonwealth" and "that time began with our first territorial legislature." *Smith Engineering Co. v. Rice*, 102 Fed. (2d) 492. Citing, *Herrin v. Sutherland*, 74 Mont. 587, 594, 241 Pac. 328, 330, 42 A. L. R. 937. See, also, *Gas Products Co. v. Rankin*, 63 Mont. 372, 389, 207 Pac. 993, 24 A. L. R. 294; *Aetna Accident & Liability Co. v. Miller*, 54 Mont. 377, 382, 170 Pac. 760, L. R. A. 1918 C. 954; *State ex rel. Metcalf v. District Court*, 52 Mont. 46, 50, 155 Pac. 278, L. R. A. 1916 F, 132, Ann. Cas. 1918 A, 985.

CHAPTER 2

PERSONS—MINORS, ADULTS AND PERSONS OF UNSOUND MIND

5685. Powers of persons whose incapacity has been adjudged—presumption of legal capacity from certificate of institution superintendent or physician.

1937. ✓ The contention that since a juror was adjudged insane under sections 1431 to 1438, and committed to an insane asylum, he must be conclusively presumed to remain insane until restored to capacity under section 10415, or until obtaining a certificate under section 5685, held untenable, since an adjudication of insanity and commitment does not establish a conclusive, but a rebuttable presumption of insanity, section 5685 merely substituting for the presumption of sanity the presumption of insanity until the certificate therein provided for is obtained, and the question became one of fact as to whether the juror was competent mentally at the time of the trial. *State v. Bucy*, 104 Mont. 416, 66 P. (2d) 1049.

5687. Minors may enforce their rights.

1938. ✓ Cited in *State ex rel. Haynes v. District Court*, 106 Mont. 578, 81 P. (2d) 422.

CHAPTER 3

PERSONAL RIGHTS — LIBEL AND SLANDER — PROTECTION TO PERSONAL RELATIONS

new 5688. General personal rights.

1938. Plaintiff, a customer at defendant store fell and was injured by tripping over an obstruction in the aisle of the store placed there by a John Doe

defendant, employee of defendant store. Action removed to federal court and by them remanded to state court. It was held that a resident defendant in a non-separable controversy anchors the case in the state court; and the non-resident defendant may not remove the suit to a federal court merely because the resident defendant has not been served with process nor voluntarily appeared in the action. *Jensen v. Safeway Stores*, 24 Fed. Supp. 585. Citing *Grosso v. Butte Electric R. Co. et al.* D. C., 217 Fed. 422; *Del Fungo Giera v. Rockland Light & Power Co. et al.*, D. C., 46 Fed. (2d) 552; *Armstrong v. Kansas City Southern R. Co. et al.*, C. C., 38 Fed. 608; *Patchin v. Hunter*, C. C. 38 Fed. 51.

5690. Libel defined.

1935. ✓ In a libel action the question of malice or no malice is for the jury, but the question whether there is any evidence of malice to go to the jury is for the court. *Miller Ins. Agency v. Home Fire & Marine Ins. Co. of California*, 100 Mont. 551, 51 P. (2d) 628.

1935. ✓ Letters sent to policy holders by an insurance company stating that the plaintiff insurance agent was no longer writing policies for the company as its agent, were prima facie privileged, and could be held libelous only on proof that they were sent maliciously. *Miller Ins. Agency v. Home Fire & Marine Ins. Co. of California*, 100 Mont. 551, 51 P. (2d) 628.

1935. ✓ Complaint in action for libel in intentionally injuring the plaintiff, an insurance agent, in his occupation by maliciously sending letters to his customers—insurance policy holders—containing false and unprivileged statements that he was no longer the agent of the defendant insurance company, held to state a cause of action regardless of whether there was a sufficient allegation of special damages. *Miller Ins. Agency v. Home Fire & Marine Ins. Co. of California*, 100 Mont. 551, 51 P. (2d) 628.

1935. ✓ The plaintiff had the burden of proving that certain letters sent by the defendant to the plaintiff's customers, thus injuring him in his business, contained statements which were false and unprivileged. *Miller Ins. Agency v. Home Fire & Marine Ins. Co. of California*, 100 Mont. 551, 51 P. (2d) 628.

1935. ✓ Language which necessarily causes damage to him whose affairs it is concerning is libelous per se, because its publication confers a prima facie right of action. *Miller Ins. Agency v. Home Fire & Marine Ins. Co. of California*, 100 Mont. 551, 51 P. (2d) 628.

1935. ✓ Under the phase of the definition of libel, in this section, which covers a false and unprivileged publication which has a tendency to injure one in his occupation, it is immaterial whether the publication contains opprobrious statements or not. *Miller Ins. Agency v. Home Fire & Marine Ins. Co. of California*, 100 Mont. 551, 51 P. (2d) 628.

1935. ✓ Libel is either per se or per quod. "Per se" means by itself, simply as such, and is applied to words which are actionable because they, of them-

selves without anything more, are opprobrious. To be thus actionable, the words must be susceptible of but the one meaning. *Miller Ins. Agency v. Home Fire & Marine Ins. Co. of California*, 100 Mont. 551, 51 P. (2d) 628.

1935.✓ To found liability for libel upon a communication prima facie privileged, actual, and not implied, malice must be shown. *Miller Ins. Agency v. Home Fire & Marine Ins. Co. of California*, 100 Mont. 551, 51 P. (2d) 628.

5691. Slander, what constitutes.

1936.✓ In suits for slander, if the words are not actionable per se, special damages must be alleged and proved. *Liebel v. Montgomery Ward & Co.*, 103 Mont. 370, 62 P. (2d) 667, applying rule to action by stenographer suing of disparagement of credit.

1936. Stenographer suing for slander for disparagement of credit held to have failed in proof of special damage in absence of evidence that words were heard by her employer or anyone else in position to injure her. *Liebel v. Montgomery Ward & Co.*, 103 Mont. 370, 62 P. (2d) 667.

1936. Words reflecting on credit of stenographer held not slanderous per se. *Liebel v. Montgomery Ward & Co.*, 103 Mont. 370, 62 P. (2d) 667.

1936. There is a distinction between plaintiffs who are merchants, traders, or those engaged in a vocation wherein credit is especially vital, and those engaged in other occupations, as to whether disparagement of credit is actionable. *Liebel v. Montgomery Ward & Co.*, 103 Mont. 370, 62 P. (2d) 667.

1936. In the law of libel and slander much which, if spoken, would not be actionable without the averment of extrinsic facts, or the allegation and proof of special damages when written or printed is actionable per se. *Liebel v. Montgomery Ward & Co.*, 103 Mont. 370, 62 P. (2d) 667.

5692. What communications are privileged.

1937.✓ While words used by a judge in a special opinion were held scandalous, scurrilous, and defamatory in regard to a litigant and his attorney, he was immune from an action for defamation, but his opinion was ordered stricken on motion of the injured parties, by the supreme court. *Nadeau v. Texas Co.*, 104 Mont. 558, 69 P. (2d) 593.

1937.✓ No action will lie against a judge for acts done, or words spoken in his judicial capacity in a court of justice. Judges, when acting in a judicial capacity, are absolutely immune from responsibility for slander or libel. *Nadeau v. Texas Co.*, 104 Mont. 558, 69 P. (2d) 593, the reason for the rule not being for the protection or benefit of a malicious or corrupt judge, but "for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequence."

5694. Right to use force.

1939. "Our statute controls as to the amount of force that can be exerted in defense of a relative." *Vaughn v. Mesch*, 107 Mont. 498, 87 P. (2d) 177.

CHAPTER 3A

RADIO BROADCASTING—LIABILITY FOR DEFACTION

Section

- 5694.1. Libel and defamation by radio — free speech—liability of operator of station.
- 5694.2. Written copy of address to be delivered—filing—station may require.
- 5694.3. Construction of act—person broadcasting—liability for defamation or libel—liability of station owner—cooperating stations—originating station—liability.

5694.1. Libel and defamation by radio — free speech—liability of operator of station. No person, firm, or corporation owning or operating a radio broadcasting station shall be liable under the law of libel and defamation on account of having made its broadcasting facilities available to any person, whether a candidate for public office or any other person, for discussion of controversial or any other subjects, in the absence of proof of actual malice on the part of such owner or operator. [L. '39, Ch. 122, § 1. Approved March 4, 1939.]

5694.2. Written copy of address to be delivered — filing — station may require. Any person, firm or corporation owning or operating a radio broadcasting station shall have the right, but shall not be compelled, to require the submission and permanent filing, in such station, of a copy of the complete address, or other form of expression, if in words, intended to be broadcast over such station, not more than 48 hours before the time of the intended broadcast thereof. [L. '39, Ch. 122, § 2. Approved March 4, 1939.]

5694.3. Construction of act—person broadcasting—liability for defamation or libel—liability of station owner—cooperating stations — originating station — liability. Nothing in this act contained shall be construed to relieve any person broadcasting over a radio station from liability under the law of libel and defamation. Nor shall anything in this act be construed to relieve any person, firm or corporation owning or operating a radio broadcasting station from liability under the law of libel and defamation on account of any broadcast prepared or made by any such person, firm or corporation or by any officer or employee thereof in the course of his employment; and in any case where liability shall exist on account of any broadcast as declared in the first clause of this sentence, in that event where two or more broadcasting stations were connected together simultaneously or by transcription, film, metal tape or other approved or adapted use for joint operation, in the making of such broadcast, such liability shall be con-

fined and limited solely to the person, firm or corporation owning or operating the radio station which originated such broadcast. [L. '39, Ch. 122, § 3. Approved March 4, 1939.]

Section 4 repeals conflicting laws.

CHAPTER 4

PERSONAL RELATIONS — MARRIAGE, HOW CONTRACTED AND AUTHENTICATED

5727. Action to determine validity.

1937. A deed to mineral land, providing for the effect thereof in case an accompanying lease should be cancelled, held not to become inoperative on such cancellation, despite the provision of section 7533 that they were to be taken together. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

CHAPTER 6

DISSOLUTION OF MARRIAGE—DIVORCE

Section

5736. Causes for divorce.

5736.1. Incurable insanity — when grounds for divorce—notice—parties.

5736. Causes for divorce. Absolute divorces, or separations from bed and board, or decrees for separate maintenance, may be granted for any of the following causes:

1. Incurable insanity;
2. Adultery;
3. Extreme cruelty;
4. Wilful desertion;
5. Wilful neglect;
6. Habitual intemperance;
7. Conviction of felony. [L. '37, Ch. 65, § 1, amending R. C. M. 1935, § 5736. Approved and in effect February 25, 1937.]

Section 3 repeals conflicting laws.

5736.1. Incurable insanity — when grounds for divorce—notice—parties. Incurable insanity may be established on the testimony of competent physicians that such person is beyond medical and surgical remedy, providing, however, that no divorce shall be granted on the grounds of incurable insanity unless such insane person has been regularly confined in a state institution for insane persons for at least five years next preceding the commencement of the action for divorce. In granting a divorce upon this ground, notice of the pendency of the action shall be served in such manner as the court may direct upon the nearest blood relative and guardian of any such insane person, and the superintendent of the

institution in which he or she is confined. Such relative or guardian and superintendent of the institution and such insane person shall be entitled to appear and be heard upon any and all issues. The status of the parties as to the support and maintenance of such insane person shall not be altered in any way by the granting of the divorce. [L. '37, Ch. 65, § 2, adding new section amendatory of R. C. M. 1935, § 5736. Approved and in effect February 25, 1937.]

Section 3 repeals conflicting laws.

5766. Period of residence required to entitle plaintiff to divorce.

1938. One who is not a citizen of the United States may become a resident within the divorce statutes for the purpose of invoking the jurisdiction of the court in a divorce proceeding. *State ex rel. Duckworth v. District Court*, 107 Mont. 97, 80 P. (2d) 367.

1938. A citizen of Canada, working there during the day and returning to Montana each night to sleep, held a resident of the state. *State ex rel. Duckworth v. District Court*, 107 Mont. 97, 80 P. (2d) 367.

1938. Where the statute on divorce refers only to residence and not to domicile, as defining jurisdiction, the word residence will be construed to mean practically the same as domicile. *State ex rel. Duckworth v. District Court*, 107 Mont. 97, 80 P. (2d) 367.

5769. Expenses of action—alimony.

1938. The question of amount of alimony to be awarded rests in the discretion of the court and will not be altered on appeal in the absence of abuse of discretion. *Woehler v. Woehler*, 107 Mont. 69, 81 P. (2d) 344.

1938. The reduction of alimony held proper, in the discretion of the court, on evidence of the ability of the husband to pay. *Woehler v. Woehler*, 107 Mont. 69, 81 P. (2d) 344.

1938. The court, in reducing the alimony to be paid in the future, had power to provide that past due alimony should be paid in installments, along with the future alimony as reduced, since the decree did not reduce the amount of past due alimony. *Woehler v. Woehler*, 107 Mont. 69, 81 P. (2d) 344.

1938. The general rule is that statutes authorizing modification of decrees allowing alimony have no retrospective effect, and apply only to future installments, unless otherwise provided in the statute. *Woehler v. Woehler*, 107 Mont. 69, 81 P. (2d) 344.

1938. While this section "does not expressly mention past due installments, it seems to us that its terms are broad enough to comprehend delinquent installments, and that, in fact, the legislature in enacting its provisions was actuated more by the consideration of delinquent than by future installments." *Woehler v. Woehler*, 107 Mont. 69, 81 P. (2d) 344.

1938. The enforcement of a final judgment in an action for separate maintenance may be controlled by orders of the court in its discretion. *Woehler v. Woehler*, 107 Mont. 69, 81 P. (2d) 344.

5770. Orders respecting custody of children.

1938. The court may modify judgment in a divorce action so as to award the custody of children and require the husband to make payments for their support and education although no mention of the

children was contained in the original decree and by private agreement of the parties their care and custody had been arranged for before entry of the decree. *State ex rel. Floch v. District Court*, 107 Mont. 185, 81 P. (2d) 692.

5771. Support of wife and children on divorce or separation granted to wife.

1937.✓ In proceedings to review an order adjudging a husband in contempt for failure to pay alimony, wherein he contended that the record showed his inability to comply with the order, and the respondent court set for a hearing the husband's application for modification of the order, though such application was made while the contempt proceeding was in progress, the reviewing court held that such modification would have no effect upon the question of the husband's failure to make any effort to comply with the order before modification and before the application for modification was made. *State ex rel. Paganini v. District Court*, 107 Mont. 195, 81 P. (2d) 697.

CHAPTER 7

HUSBAND AND WIFE

5782. Mutual obligations of husband and wife.

✓1937. Cited in *Bingham v. National Bank of Montana*, 105 Mont. 159, 72 P. (2d) 90.

5783. Rights of husband as head of family.

✓1938. In a divorce action evidence held to show that the defendant, at the time the action was commenced, was a resident of another county than the one in which the action was brought. *Archer v. Archer*, 106 Mont. 116, 75 P. (2d) 783.

5784. Duties of husband to wife as to support.

✓1937. Cited in *Bingham v. National Bank of Montana*, 105 Mont. 159, 72 P. (2d) 90.

5790. Liability for acts or debts of each other.

✓1937. Cited in *Bingham v. National Bank of Montana*, 105 Mont. 159, 72 P. (2d) 90.

✓1937. Cited in *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337, holding that husband and wife should not be joined as defendants unless action is for necessities of life, and to do so in sharp practice. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

✓1936. An award of \$35 a month for college education of a divorced father's son in the custody of the mother held proper where mother could not bear total burden. *Refer v. Refer*, 102 Mont. 121, 56 P. (2d) 750.

5799. Separate property of wife—how far liable.

✓1937. Cited in *Bingham v. National Bank of Montana*, 105 Mont. 159, 72 P. (2d) 90.

✓1935. In action for wrongful execution against the separate property of a wife, in action against husband alone, an instruction that the verdict should be for the wife if the property was hers, held not

erroneous in not stating the law where the creditor is deceived into thinking the property belonged to the wife. *Brennan v. Mayo*, 100 Mont. 439, 50 P. (2d) 245.

CHAPTER 8

DOWER

✓5823. Widow's rights in land aliened.

1938. Where a ten-year old girl had lived with a foster parent for most of her life and had been well provided for and trained, it was held that the trial judge's discretion in awarding her to the foster parent was not abused. *Haynes v. Fillner*, 106 Mont. 59, 75 P. (2d) 802.

CHAPTER 9

PARENT AND CHILD—CHILDREN BY BIRTH AND BY ADOPTION

5833. Obligations of parents for the support and education of their children.

✓1936. An award of \$35 a month for college education of a divorced father's son in the custody of the mother held proper where mother could not bear total burden. *Refer v. Refer*, 102 Mont. 121, 56 P. (2d) 750.

5834. Custody of legitimate child.

✓1938. The events by which the cessation of the parent's custody over his child may be brought about as mentioned in section 5841, are not exclusive, and such cessation may result from estoppel against the parent or waiver of his rights by voluntary surrender of the child's custody and the establishment of new relations permissively. *Haynes v. Fillner*, 106 Mont. 59, 75 P. (2d) 802.

✓1938. Presumptively the best interests of the child require that its custody be awarded to the natural parent, but this is a rebuttable presumption. *Haynes v. Fillner*, 106 Mont. 59, 75 P. (2d) 802.

✓1938. Cited in *Haynes v. Fillner*, 106 Mont. 59, 75 P. (2d) 802, holding the question of award of custody must be determined upon its own peculiar facts and circumstances, and that where the child has been voluntarily relinquished by the natural parent to a foster parent, between whom and the child there has grown up reciprocal affection the court may refuse to disturb the relation at the natural parent's request.

✓1938. Whether an agreement of a parent to surrender a child to another or not, is valid, it is proper to be considered in determining what is for the best interests of the child, and whether the parent has waived his rights to its custody or is estopped from asserting them. *Haynes v. Fillner*, 106 Mont. 59, 75 P. (2d) 802.

5841. When parental authority ceases.

✓1938. The events by which the cessation of the parent's custody over his child may be brought about as mentioned in section 5841, are not exclusive, and such cessation may result from estoppel against the parent or waiver of his rights by voluntary surrender of the child's custody and the establishment of new relations permissively. *Haynes v. Fillner*, 106 Mont. 59, 75 P. (2d) 802.

5861. Proceedings on adoption.

1939. ✓ So far as consent is concerned the effect of this amendment was to validate all adoptions where the consent of the parents did not appear of record as against everyone but non-consenting parent. In re Hoermann's Estate; Liptak v. Yule, Mont., 91 P. (2d) 394.

1939. ✓ In an attack upon the validity of an adoption on the ground that the records of the proceeding failed to show certain steps required by statute, it was held that the judgment of the court is equally entitled to credit whether the jurisdiction is generally or specifically conferred. In re Hoermann's Estate; Liptak v. Yule, Mont., 91 P. (2d) 394.

1939. ✓ The modern tendency is to give adoption statutes a liberal construction to effect their benevolent purposes and promote the welfare of the child. In re Hoermann's Estate; Liptak v. Yule, Mont., 91 P. (2d) 394.

1937. ✓ A legatee who was never legally adopted as the child of the deceased, the adoption papers being drawn up but never executed as required by law, was not entitled to the imposition of an inheritance tax as an adopted child, under section 10400.2(1), although the deceased had referred to him as his child, educated him, and paid his expenses. In re Clark's Estate, 105 Mont. 401, 74 P. (2d) 401.

CHAPTER 10**GUARDIAN AND WARD****5873. Appointment by parent.**

1938. ✓ The events by which the cessation of the parent's custody over his child may be brought about as mentioned in section 5841, are not exclusive, and such cessation may result from estoppel against the parent or waiver of his rights by voluntary surrender of the child's custody and the establishment of new relations permissively. Haynes v. Fillner, 106 Mont. 59, 75 P. (2d) 802.

5878. Rules of awarding custody of minors.

1938. ✓ The events by which the cessation of the parent's custody over his child may be brought about as mentioned in section 5841, are not exclusive, and such cessation may result from estoppel against the parent or waiver of his rights by voluntary surrender of the child's custody and the establishment of new relations permissively. Haynes v. Fillner, 106 Mont. 59, 75 P. (2d) 802.

1938. ✓ Presumptively the best interests of the child require that its custody be awarded to the natural parent, but this is a rebuttable presumption. Haynes v. Fillner, 106 Mont. 59, 75 P. (2d) 802.

1938. ✓ Cited in Haynes v. Fillner, 106 Mont. 59, 75 P. (2d) 802, holding the question of award of custody must be determined upon its own peculiar facts and circumstances, and that where the child has been voluntarily relinquished by the natural parent to a foster parent, between whom and the child there has grown up reciprocal affection the court may refuse to disturb the relation at the natural parent's request.

1938. ✓ Whether an agreement of a parent to surrender a child to another or not, is valid, it is proper to be considered in determining what is for

the best interests of the child, and whether the parent has waived his rights to its custody or is estopped from asserting them. Haynes v. Fillner, 106 Mont. 59, 75 P. (2d) 802.

1938. ✓ Where a ten-year old girl had lived with a foster parent for most of her life and had been well provided for and trained, it was held that the trial judge's discretion in awarding her to the foster parent was not abused. Haynes v. Fillner, 106 Mont. 59, 75 P. (2d) 802.

5881. Duties of guardian of estate.

1935. ✓ Where guardian, not knowing that bank was insolvent, deposited ward's money therein on certificate of deposit maturing in one year with interest, with privilege of withdrawing money after six months at any time, he was not liable for loss due to failure of bank after the six month period dating from deposit. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

1935. ✓ In guardianship matters wherein the ward is a minor or an incompetent, and therefore unable to give direction or consent, the courts should be meticulous in protecting their interests and should apply the rules of liability of the guardian rigorously. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

1935. ✓ Placing money in bank on certificate of deposit for fixed time at interest is a loan to bank, and guardian so doing is liable for loss if bank fails. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

1935. ✓ Where guardian, as prudent man, places ward's funds in reputable bank subject to check, and bank fails, he is not liable for loss. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

1935. ✓ If the guardian loans his ward's funds without being authorized to do so by an order of court he assumes the risk of loss, and, it being shown that the loan is uncollectible, the amount thereof is properly chargeable to the guardian. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

CHAPTER 12**THE CREATION OF PRIVATE CORPORATIONS****5903. Purposes for which private corporations may be formed.**

1937. ✓ A corporation is not a "person" who may practice law. State ex rel. Freebourn v. Merchants' Credit Service, 104 Mont. 76, 66 P. (2d) 337.

1937. ✓ A corporation can never be authorized to practice law itself, and neither can it employ attorneys to practice for another. State ex rel. Freebourn v. Merchants' Credit Service, 104 Mont. 76, 66 P. (2d) 337.

5908. Manner of forming corporations.

1939. ✓ The failure to hold the organization meeting of stockholders in the state of Montana does not constitute an automatic dissolution of the corporation, nor preclude it from maintaining an action against a director. Golden Rod Mining Co. v. Bukvick, Mont., 92 P. (2d) 316.

CHAPTER 13

CHANGES IN CORPORATE ORGANIZATION AND MANAGEMENT

Section

5918. Articles of incorporation — amendment — purposes.
 5919.1. Articles of incorporation — amendment — procedure—increase of stock.
 5923.1. Certificate of proceedings—contents—filing —when amendment effective.
 5923.2. Certificate of proceedings—filing—fees.
 5928.1. Articles of incorporation — amendment — method—additional to other laws.

5918. Articles of incorporation—amendment—purposes. Any corporation, heretofore or hereafter organized under any of the laws of the state of Montana, whether formed and existing before or after the taking effect of the codes on July 1, 1895, may, in the manner herein provided, amend its original or amended articles of incorporation by changing the name, principal office or principal place of business or number of directors, by changing the number, par value, character, class or preference of its shares of capital stock, by increasing or decreasing the capital stock, by changing or extending its powers or business to embrace any power or purpose for which corporations may be organized under the laws of Montana, by extending its term of existence within the limits provided by law, or by an amendment in respect to any other matter which might lawfully have been originally provided in such articles of incorporation, or is now or may be, by law, provided in original articles of incorporation or in amendments thereto. [L. '37, Ch. 32, § 1, apparently amending R. C. M. 1935, § 5918, although not so stating. Approved and in effect February 18, 1937.]

5919.1. Articles of incorporation — amendment — procedure — increase of stock. Such amendment may be made by the adoption of a resolution by a two-thirds vote of the capital stock of such corporation, represented in person or by proxy at any regular annual meeting of such corporation and entitled to vote thereat, held at the time and place prescribed by its by-laws for the election of directors without special notice thereof, at which meeting a quorum as defined by section 5946, revised codes of Montana of 1935, or prescribed by the by-laws of such corporation, as in said section provided, is present; or at any special meeting of the stockholders of such corporation called, noticed and held for that specific purpose in the manner prescribed by its by-laws, at which meeting a quorum, as defined by said section 5946, revised codes of Montana of 1935, is present; provided, however, that the stock of any corporation shall not be increased

hereunder without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty (30) days notice given in pursuance of sections 5920 and 5921, revised codes of Montana of 1935. [L. '37, Ch. 32, § 2. Approved and in effect February 18, 1937.]

5923.1. Certificate of proceedings—contents—filing—when amendment effective. A certificate of the proceedings had at such meeting, showing compliance with the provisions of this act, containing a copy of the resolution, or resolutions, adopted, and showing the vote thereon, shall be made out, signed and verified by the affidavit of the chairman of such meeting and countersigned by the secretary of the meeting, and shall be filed in the office of the county clerk of the county wherein the original articles of incorporation were filed, and a copy thereof, certified by such county clerk, shall be filed in the office of the secretary of state. A similar certified copy of such certificate shall likewise be filed in the office of the county clerk of any county to which said corporation may have changed its principal office or principal place of business. Upon the filing of the certified copy of such certificate in the office of the secretary of state, as hereinabove provided, the said amendment, or amendments, shall immediately become effective. [L. '37, Ch. 32, § 3. Approved and in effect February 18, 1937.]

5923.2. Certificate of proceedings—filing—fees. Such corporation shall pay to the secretary of state and to the respective county clerks of the counties in which certificates are filed the fees required by the laws of the state of Montana. [L. '37, Ch. 32, § 4. Approved and in effect February 18, 1937.]

5924. When amendment effective.

Note. When amendment effective, see § 5923.1.

5928.1. Articles of incorporation — amendment—method—additional to other laws. The method of amending the articles of incorporation herein provided shall be in addition to any other method or methods provided by law. [L. '37, Ch. 32, § 5. Approved and in effect February 18, 1937.]

CHAPTER 15

DIRECTORS

5933. Corporate powers and business exercised by board of directors—number and membership of board—quorum.

1939. ✓ It is well settled that the board of directors, and not the stockholders, controls the conduct of the corporation's business, and necessarily controls

the corporation's property with reference to all matters within and incidental to such business. *Hanrahan v. Anderson et al.* (Montana-Dakota Utilities Co.), Mont., 90 P. (2d) 494.

CHAPTER 17

CORPORATE STOCKS AND THE RIGHTS OF STOCKHOLDERS

5957. Five per cent of stock may demand statement.

1938. ✓ To recover the penalty under this section it must be shown that the person on whom the request was made was the treasurer at the time the request made. *Stanton Trust & Savings Bank v. Johnson*, 107 Mont. 348, 85 P. (2d) 336.

1938. ✓ It is incumbent on a stockholder who seeks to recover the penalty under this section to alledge and prove affirmatively every fact and circumstance upon which his right to recover depends. *Stanton Trust & Savings Bank v. Johnson*, 107 Mont. 348, 85 P. (2d) 336.

1938. ✓ A person cannot be held to be the treasurer by estoppel where the stockholder had the means of knowing who the real treasurer was by examining the books of the corporation. *Stanton Trust & Savings Bank v. Johnson*, 107 Mont. 348, 85 P. (2d) 336.

1938. ✓ In an action to recover the penalty provided by the above section, evidence held to show that the party on whom the request for the statement was made was not the treasurer of the corporation at the time the request was made, nor could he be held the treasurer by estoppel because he had inadvertently signed certain corporation papers as treasurer. *Stanton Trust & Savings Bank v. Johnson*, 107 Mont. 348, 85 P. (2d) 336.

1938. ✓ The stockholder under this section must at his peril ascertain who is the real treasurer in order to recover the penalty. *Stanton Trust & Savings Bank v. Johnson*, 107 Mont. 348, 85 P. (2d) 336.

1938. ✓ The treasurer's own statement that he was the treasurer of the corporation, even if knowingly and voluntarily made, would not make him the treasurer if in fact not such, for the purposes of this section. *Stanton Trust & Savings Bank v. Johnson*, 107 Mont. 348, 85 P. (2d) 336.

1938. ✓ One who was not the treasurer of the corporation at the time the request for the statement was made cannot be held liable as such by estoppel where there were no dealings between the stockholder and the corporation by which the stockholder changed his position. *Stanton Trust & Savings Bank v. Johnson*, 107 Mont. 348, 85 P. (2d) 336.

1938. ✓ The treasurer's liability under this section attaches as official and by virtue of the office he holds in the corporation, and not otherwise. *Stanton Trust & Savings Bank v. Johnson*, 107 Mont. 348, 85 P. (2d) 336.

1937. ✓ This statute did not repeal or change the then existing laws relating to the right of the defendant in an action to demand a change of venue. *Stanton Trust & Savings Bank v. Johnson*, 104 Mont. 235, 65 P. (2d) 1188.

CHAPTER 19

POWERS AND DUTIES OF CORPORATIONS

Section

5994.1. Obligations convertible into stock—issuance —powers of directors—increase of stock.

5994.1. Obligations convertible into stock—issuance — powers of directors — increase of stock. The board of directors of any corporation hereafter organized or now existing under any of the laws of the state of Montana, whether formed and existing before or after the taking effect of the codes on July 1, 1895, as such, has power to issue bonds, debentures or other obligations convertible into stock of any class, in amounts, upon the terms, in the manner and under the conditions provided by resolution of the board of directors of such corporation; provided that the authorized stock of such corporation shall not be increased without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty (30) days notice given in pursuance of law. Such resolution, except when the original or amended articles of incorporation provide otherwise, shall preserve to the stockholders pre-emptive or preferential rights to subscribe to such issue as provided by law. [L. '39, Ch. 60, § 1. Approved and in effect February 25, 1939.

Section 2 repeals conflicting laws.

5998. Corporate existence cannot be questioned.

1937. ✓ This section was applied where a guarantor stated in the contract of guaranty that the guarantee was a corporation. *W. T. Rawleigh Co. v. Miller*, 105 Mont. 456, 73 P. (2d) 552.

6003. Annual statement of corporations.

1938. Under this section the plaintiff must show liability of directors, for failure to file an annual report, to have existed not at the time judgment was secured, but rather at the time the debt was incurred. *Bergin v. Tweedy*, 29 Cal. App. (2d) 573, 84 P. (2d) 1052, following *Continental Supply Co. v. Abell*, 95 Mont. 148, 84 P. (2d) 133.

1938. In a suit under this section, to recover on judgments for wages, where the plaintiff failed to amend his complaint, after demurrer, so as to show that the debt was incurred while the corporation was in default in the matter of failure to file an annual statement, the suit was properly dismissed. *Bergin v. Tweedy*, 29 Cal. App. (2d) 573, 84 P. (2d) 1052.

1938. The penalty under this section does not apply where the directors were not in default when the debt was incurred. *Interstate Lumber Co. v. Tweedy*, 28 Cal. App. (2d) 208, 82 P. (2d) 208.

1938. The purpose of this section is to enable those contemplating dealing with the corporation to ascertain whether or not it is a good risk. *Interstate Lumber Co. v. Tweedy*, 28 Cal. App. (2d) 208, 82 P. (2d) 208.

CHAPTER 20

PROCEDURE FOR SALE OF THE PROPERTY OF A CORPORATION

6004. Procedure for sale, lease, etc., of corporate property.

1939. ✓ The conveyance was a nullity, for the stockholder's meetings purporting to authorize it were held on insufficient notice. *Hanrahan v. Andersen et al.* (Montana-Dakota Utilities Co.), Mont., 90 P. (2d) 494.

1939. ✓ A transfer of practically all of the assets of a corporation cannot be made without authority from a stockholder's meeting, held after 30 days notice by mail and publication, and any attempted transfer without complying with the statute is void. *Hanrahan v. Andersen et al.* (Montana-Dakota Utilities Co.), Mont., 90 P. (2d) 494.

1939. ✓ The trust deed to Andersen was void because of failure to comply with the provisions of the statute, and was ultra vires because utterly without consideration, and void. A corporation has no power to make gifts of its property, whether all or part. *Hanrahan v. Andersen et al.* (Montana-Dakota Utilities Co.), Mont., 90 P. (2d) 494.

CHAPTER 22

DISSOLUTION OF CORPORATIONS

Section

6011. Winding up the affairs of and disposing of the property of dissolved corporations—procedure—distribution of property—transfer to new corporation—conveyance by trustees—effect—modes of dissolution—appointment and powers and duties of trustees—law applicable—trustees' fees—corporations to which section applicable—action to determine ownership of property—decree—attorney's fee—trustees may sue and be sued—"stockholder" defined.

6011.1. Partial invalidity saving clause of section 6011.

6010. Dissolution of corporations.

1939. ✓ The failure to hold the organization meeting of stockholders in the state of Montana does not constitute an automatic dissolution of the corporation, nor preclude it from maintaining an action against a director for breach of the quasi trust relationship between a dummy director and the corporation. *Golden Rod Mining Co. v. Bukvich*, Mont., 92 P. (2d) 316.

1937. ✓ Beneficiary of a trust fund in bank for the purchase of realty from bank, which went into voluntary dissolution, could sue the directors as trustees although the bank had no assets, since plaintiff had a right to reduce his claim to judgment and take his chances of collection. *Fitzpatrick v. Stevenson*, 104 Mont. 439, 67 P. (2d) 310.

1937. ✓ In an action against the directors of a voluntarily dissolved bank, as trustees, to recover a trust fund, held that the plaintiff was not required to allege that no other trustees were appointed by the court, under the rule that exceptions in a statute are matters for the defendant to assert and prove, especially since the dissolution was under subdivision

4 of section 6010, and the bank had no assets, as in such a case there would be little likelihood of the court appointing trustees. *Fitzpatrick v. Stevenson*, 104 Mont. 439, 67 P. (2d) 310.

6011. Winding up the affairs of and disposing of the property of dissolved corporations—procedure—distribution of property—transfer to new corporation—conveyance by trustees—effect—modes of dissolution—appointment and powers and duties of trustees—law applicable—trustees' fees—corporations to which section applicable—action to determine ownership of property—decree—attorney's fee—trustees may sue and be sued—"stockholder" defined. The directors of any dissolved corporation who are such at the time such corporation shall become dissolved, become upon such dissolution the trustees of the creditors and stockholders of such corporation. Such trustees shall settle the affairs of such corporation, liquidate its assets and apply the proceeds of such liquidation to the payment of the expenses of such trustees, to the payment of its debts and other obligations, and distribute any surplus remaining to the stockholders of such corporation, in a proceeding in the district court of the county in which the principal place of business of such corporation was situated at the time of its dissolution. The procedure provided by the code of civil procedure for the probate of estates of deceased persons shall be followed in such proceeding, except that notice to creditors shall be published in each county in the state of Montana in which any real estate owned by such corporation at the time of its dissolution shall be situated, and that the time for presentation of claims shall in all cases be four (4) months from the date of the first publication of such notice; that sales of real property may be for cash, or upon option, with or without lease; that notice of any petition for final distribution shall be directed to the same persons and shall be served in the same manner as provided by chapter 63 of the code of civil procedure in the case of summons in an action to quiet title under that chapter as against the world; and that the money or property of such corporation subject to distribution shall be distributed pro rata to those persons who shall, upon the hearing of such petition for distribution, establish their ownership of capital stock of such corporation, according to their respective stock ownerships, as so established in such proceeding.

The court may, if it shall determine that it is to the best interests of the stockholders, distribute to such stockholders any property remaining after the payment of expenses of administration and of the debts of such corporation, without requiring that the same be turned into cash.

The court shall also have power, and, upon the petition of the holders of the majority of the stock held by the persons who shall in such proceeding establish their ownership of stock of such corporation, it shall be its duty, to direct the transfer of the property of such corporation, subject to distribution, to a new corporation organized under the laws of the state of Montana, for the same purposes for which such dissolved corporation was organized, in exchange for all of the authorized capital stock of such new corporation, such capital stock to be issued pro rata to the persons so establishing their right to receive distribution of the property of said dissolved corporation, in accordance with the number of shares established by them respectively in the proceeding above provided for.

All conveyances or other transfers of the property of such dissolved corporation executed and delivered by such trustees in accordance with the provisions of this section shall be effective to convey the legal title to the property described therein.

In the case of a corporation composed of members instead of stockholders the same procedure shall apply, and in any such case, for the purposes of this section, the word "stockholder" shall mean "member" and the word "stock" or the words "capital stock" shall mean "interest", "units" or other words descriptive of the interest of such members in such corporation and its assets.

The term "trustees" as herein used shall include the singular as well as the plural.

A corporation shall be deemed to be dissolved within the meaning of this section whenever its corporate powers shall have been completely lost by lapse of time, by the final judgment of a court of competent jurisdiction, by the action of its stockholders or members, or in any other manner.

In the event all of the directors of such dissolved corporation, who were such at the time of the dissolution of such corporation, shall have died, resigned, or refuse or be unable to act, the district court of the county in which was situated the principal place of business of such corporation at the time of its dissolution, shall, upon petition of a trustee, stockholder or creditor of such corporation, and upon a sufficient showing of the necessary facts, appoint a trustee or trustees who shall have the same powers and duties as are by this section conferred and imposed upon the directors of such corporation who were such at the time of the dissolution of such corporation.

Any receiver or trustee appointed under the provisions of chapter 45 of the code of civil procedure shall be governed by the provisions

of this section as well as by the provisions of said chapter 45.

Fees shall be allowed to the trustees and their attorneys in accordance with the provisions of chapter 135 of the code of civil procedure.

The provisions of this section shall apply to any corporation heretofore or hereafter dissolved and whether or not it owes debts or has other unfinished business, and such proceeding may be for the sole purpose of disposing of the assets of such corporation in one of the methods prescribed and permitted by this section.

In the case of a corporation which shall have become dissolved at or prior to the passage and approval of this act but has no affairs requiring a settlement or liquidation but owned real property which has not been disposed of, any stockholder may, in lieu of the proceeding hereinabove authorized, bring an action under the provisions of chapter 63 of the code of civil procedure for the purpose of determining the ownership of the real estate of such corporation.

In such case the decree shall award such real estate to the persons who shall in such proceeding establish their ownership of capital stock of such corporation, pro rata, according to their respective stock ownerships, as so established in such proceeding.

In such action the court may allow the plaintiff a reasonable attorney's fee for bringing and prosecuting such action.

The surviving trustees of any dissolved corporation or the trustees appointed in lieu thereof as provided by statute may sue and be sued with the same effect as such dissolved corporation might have sued or have been sued had it not become dissolved.

The term "stockholder", as used in this section, shall include not only stockholders of record upon the books of such corporation, but their successors in interest in the ownership of stock of such corporation. [L. '37, Ch. 198, § 1, amending R. C. M. 1935, § 6011. Approved and in effect March 18, 1937.

1939. ✓ The remedy of a creditor of a dissolved corporation where former directors as trustees refuse, or are unable, to discharge their trust is by petition in probate for the appointment of new trustees, but where the corporation has not been dissolved the remedy is against the corporation, and in neither case is the creditor's remedy a writ of supervisory control. State ex rel. Stoddard v. District Court, Mont. _____, 88 P. (2d) 34.

1937. ✓ In an action against the directors of a voluntarily dissolved bank, as trustees, to recover a trust fund, held that the plaintiff was not required to allege that no other trustees were appointed by the court, under the rule that exceptions in a statute are matters for the defendant to assert and prove, especially since the dissolution was under subdivision

4 of section 6010, and the bank had no assets, as in such a case there would be little likelihood of the court appointing trustees. *Fitzpatrick v. Stevenson*, 104 Mont. 439, 67 P. (2d) 310.

1937. ✓ Beneficiary of a trust fund in bank for the purchase of realty from bank, which went into voluntary dissolution, could sue the directors as trustees although the bank had no assets, since plaintiff had a right to reduce his claim to judgment and take his chances of collection. *Fitzpatrick v. Stevenson*, 104 Mont. 439, 67 P. (2d) 310.

1937. ✓ While this section denominates the directors as "trustees," they are in fact but the successors in interest of the corporation, with power to sue on behalf of, and to be sued for the debts of, the corporation. *Fitzpatrick v. Stevenson*, 104 Mont. 439, 67 P. (2d) 310.

6011.1. Partial invalidity saving clause of section 6011. In the event any portion of said section 6011 as amended by this act, shall, by a court of competent jurisdiction, be finally held to be unconstitutional for any reason, the remainder of said section shall nevertheless continue in force, provided such remaining provisions are workable and will effectuate any of the purposes of this act. [L. '37, Ch. 198, § 2. Approved and in effect March 18, 1937.]

CHAPTER 23

SCOPE OF LAW—RIGHT OF LEGISLATURE TO REPEAL

6013. Chapter and section may be repealed.

1937. ✓ Beneficiary of a trust fund in bank for the purchase of realty from bank, which went into voluntary dissolution, could sue the directors as trustees although the bank had no assets, since plaintiff had a right to reduce his claim to judgment and take his chances of collection. *Fitzpatrick v. Stevenson*, 104 Mont. 439, 67 P. (2d) 310.

1935. ✓ Plaintiff secured a judgment in Iowa against defendant, a New York corporation. Subsequent to this judgment but also subsequent to the dissolution of the corporation in New York, plaintiff instituted a suit in Montana attaching personal property therein of the defendant foreign corporation. It was held that a local creditor may protect himself by attachment before the foreign liquidator has taken possession of the property. The procedure on the part of the liquidator is to apply for the appointment of an ancillary receiver in the foreign jurisdiction in order to bring the property under his control. *Van Schaick v. Parsons*, 11 Fed. Supp. 654.

CHAPTER 24

BANKS AND BANKING

Section

6014.23. Changing number of directors—notice of special meetings of stockholders—annual meeting—votes required—certificate of proceedings—approval—filing.

6014.39-1. Safe deposit boxes and vaults—renting—joint tenancy—right of access—survivorship.

Section

6018.1. Financial institutions authorized to obtain insurance and make loans under national housing act—other restricting laws not applicable.

6018.2. Federal housing securities as collateral security for deposits.

6014.2. Institution to which act is applicable.

1936. ✓ The supreme court must take notice that a bank whose assets were in the hands of the state superintendent of banks who was liquidating it, was a state bank chartered under the laws of the state of Montana. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

6014.6. Trust company defined—purpose for which may be formed.

1936. ✓ Where a sum of money was deposited in a bank with direction to pay the interest over to trustees for the use of others, the bank was held a trustee of the deposit and the trustees only trustees of the interest. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585, holding, also, that the bank's trust was not terminated by the bank's failure, and that the fund should be paid over to such trustee as the court should appoint, as a preferred claim in liquidation of the bank. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

1936. ✓ Under subsection (1) of this section a corporation, a bank, exercising the powers of a trust company, has specific authority to receive moneys in trust, and may allow an agreed rate of interest thereon. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

1936. ✓ Under the rule that there is a presumption that the acts of a corporation are not ultra vires, held that there was a presumption that a state bank had direct or implied authority to accept a trust fund with a fixed rate of interest to be paid thereon. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

6014.23. Changing number of directors—notice of special meetings of stockholders—annual meeting—votes required—certificate of proceedings—approval—filing. Any state bank or trust company may increase or diminish the number of its directors by amending its articles of incorporation at any regular annual meeting or at any special meeting called and noticed for that purpose, of the stockholders of the bank or trust company, provided that the number of directors shall not at any time be less than three or more than eleven.

Whenever any bank or trust company shall decide to call a special meeting of the stockholders for the purpose of amending its articles of incorporation relative to the number of directors, written or printed notice of such meeting must be deposited in the post office addressed to each stockholder of record entitled to vote at such meeting under the articles of incorporation or amendments thereto, and the laws and constitution of Montana, at his last known place of residence at least ten days previous to the date set for the

holding of such meeting, and in addition, said notice must be published once a week for two consecutive weeks in a newspaper published in the county wherein the principal place of business of such corporation is situated. If no newspaper is published in the county it shall not be necessary to publish said notice; provided, however, that the matter of amending the articles of incorporation to change the number of directors may be submitted to and acted upon at any annual meeting of the stockholders without special notice thereof.

If at the time and place specified in the notice of such special meeting or at the annual meeting of the stockholders, stockholders representing two-thirds of all the shares of stock of the corporation shall appear in person or by proxy and vote in favor of such amendment, a certificate of the proceedings showing a compliance of the provisions of this act and the number to which the board of directors has been increased or diminished, shall be prepared, certified and sworn to and filed with the superintendent of banks, who shall within thirty days after the receipt thereof either approve or reject the amendment. The action of the superintendent of banks on said amendment shall be final. If he approves the same, he shall notify the bank, whereupon the certificate with the superintendent's approval attached thereto shall be filed in the office of the county clerk and recorder of the county wherein the bank is situated, and a certified copy thereof shall be filed in the office of the secretary of state. Upon the filing of such certified copy with the secretary of state, the amendment shall become effective. [L. '37, Ch. 131, § 1, amending R. C. M. 1935, § 6014.23. Approved and in effect March 15, 1937.

Section 2 repeals conflicting laws.

6014.25. Stockholder's liability.

1936. ✓ Double liability of stockholders was not known to the common law and would not exist but for the statutes. *Capital National Bank of St. Paul v. Bartley*, 101 Mont. 591, 56 P. (2d) 728.

1936. ✓ The words "for all contracts, debts, and engagements," as used in section 6014.25, do not comprehend every kind of liability, and do not include tort liabilities, but only those obligations voluntarily assumed. *Capital National Bank of St. Paul v. Bartley*, 101 Mont. 591, 56 P. (2d) 728.

6014.39-1. Safe deposit boxes and vaults—renting—joint tenancy—right of access—survivorship. When so specified in the agreement granting for a term of time the right in two or more persons to use or occupy any safe or box, commonly referred to as a safe deposit vault or box for the safe keeping of valuables, such interest and estate created in the grantees shall be a joint tenancy in such vault or box and pass to the survivors and survivor upon the death of one or more of the

joint tenants with right in such survivors and survivor to have access to and possession of such vault or box and the contents thereof under the terms of the agreement. [L. '39, Ch. 62, § 1. Approved and in effect February 24, 1939.

Section 2 repeals conflicting laws.

6014.47. Purchase of obligation of bank by officer.

1937. ✓ Section 6014.47 held to prohibit a bank president from buying land from the bank for a less price than the bank's investment therein, construing the section under the rules of sections 8740 and 8771. *Johnson v. Kaiser*, 104 Mont. 261, 65 P. (2d) 1179.

1937. ✓ In this section the phrase "a sum less than shall appear upon the face of the obligation" means the sum which could be ascertained from an examination of the instrument itself without regard to extrinsic facts or evidence. *Johnson v. Kaiser*, 104 Mont. 261, 65 P. (2d) 1179.

6014.122. No certificate of deposit to issue for borrowed money.

1935. ✓ This section was enacted to require banks, if they desire to borrow money, to execute the instrument evidencing the debt with the authority and in the manner required in executing a corporate note, but does not prohibit the issuance of certificates of deposit in the ordinary course of a banking business. In *re Welch's Estate and Guardianship*, 100 Mont. 47, 45 P. (2d) 681.

1935. ✓ Every general deposit of money in a bank, whether in checking or savings account, on certificate of deposit payable on demand or time, creates the relation of debtor and creditor, and is, therefore, in effect a loan to the bank. In *re Welch's Estate and Guardianship*, 100 Mont. 47, 45 P. (2d) 681.

6014.141. Notice to creditors of insolvent bank.

1935. ✓ If a claim shows to what class it belongs it may be presented to, and allowed by, the superintendent, whether or not it is shown to be a general or preferred claim. *Powell Building & Loan Association v. Larabie Brothers Bankers*, 100 Mont. 183, 46 P. (2d) 697.

6014.142. Claims—allowance and rejection.

1936. ✓ Where money was given to bank in trust to pay interest to other trustees for beneficiary two trusts were created—one for principal sum and one for interest—by trust memorandum. *Conley v. Johnson*, 101 Mont. 378, 54 P. (2d) 585.

1936. ✓ Where money was placed in bank in trust to pay the interest to other trustees such trustees were parties in interest entitled to sue bank to have trust money allowed as preferred claim where the donor made claim to superintendent of banks in behalf of all parties interested. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

1935. ✓ Even if a claim was rejected as a preferred claim it could have been allowed as a general claim, and the superintendent should have notified the claimant as to its status as allowed. *Powell Building & Loan Association v. Larabie Brothers Bankers*, 100 Mont. 183, 46 P. (2d) 697.

1935.✓ If a claim shows to what class it belongs it may be presented to, and allowed by, the superintendent, whether or not it is shown to be a general or preferred claim. *Powell Building & Loan Association v. Larabie Brothers Bankers*, 100 Mont. 183, 46 P. (2d) 697.

6014.144. Claims — order of payment — priorities.

1936.✓ Where a sum of money was deposited in a bank with direction to pay the interest over to trustees for the use of others, the bank was held a trustee of the deposit and the trustees only trustees of the interest. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585, holding, also, that the bank's trust was not terminated by the bank's failure, and that the fund should be paid over to such trustee as the court should appoint, as a preferred claim in liquidation of the bank. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

1936.✓ Where money was placed in bank in trust to pay the interest to other trustees such trustees were parties in interest entitled to sue bank to have trust money allowed as preferred claim where the donor made claim to superintendent of banks in behalf of all parties interested. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

1936.✓ Where money was given to bank in trust to pay interest to other trustees for beneficiary two trusts were created—one for principal sum and one for interest—by trust memorandum. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

1935.✓ If a claim shows to what class it belongs it may be presented to, and allowed by, the superintendent, whether or not it is shown to be a general or preferred claim. *Powell Building & Loan Association v. Larabie Brothers Bankers*, 100 Mont. 183, 46 P. (2d) 697.

1935.✓ Even if a claim was rejected as a preferred claim it could have been allowed as a general claim, and the superintendent should have notified the claimant as to its status as allowed. *Powell Building & Loan Association v. Larabie Brothers Bankers*, 100 Mont. 183, 46 P. (2d) 697.

6018.1. Financial institutions authorized to obtain insurance and make loans under national housing act—other restricting laws not applicable. Notwithstanding any other provisions of the law of this state restricting the amount of any loan in relation to the value of the real estate, and/or restricting the term of any such loan, and/or restricting the rate of interest on any such loan, it shall be lawful for any corporation, bank, trust company, insurance company, investment company, and any other financial institution, which has been approved as a mortgagee by the federal housing administrator, to obtain insurance, and to make such loans secured by real estate as the federal housing administrator insures or makes a commitment to insure. [L. '37, Ch. 25, § 1, amending R. C. M. 1935, § 6018.1. Approved and in effect February 17, 1937.]

6018.2. Federal housing securities as collateral security for deposits. Wherever collateral must or may be furnished by any depository in the state of Montana as security

for the deposit of any funds whatsoever, or wherever collateral must or may be deposited with any official of the state of Montana pursuant to any statute of this state, mortgages insured and debentures issued by the federal housing administrator shall be considered eligible collateral for such purposes. [L. '37, Ch. 25, § 2, adding new section to R. C. M. 1935, after § 6018.1. Approved and in effect February 17, 1937.]

CHAPTER 24A

FEDERAL DEPOSIT INSURANCE CORPORATION—BANKING INSTITUTIONS AUTHORIZED TO DEAL WITH

Section

- 6018.3. Definition of "banking institution."
- 6018.4. Contract with Federal Deposit Insurance Corporation — authorization — may subscribe to stock of corporation.
- 6018.5. Appointment of corporation as agent — power of superintendent of banks.
- 6018.6. Subrogation of corporation to rights of closed banking institution.
- 6018.7. Superintendent may accept examination made by corporation—duty of banking institutions not limited hereby.
- 6018.8. Borrowing money from and selling assets of closed bank to corporation—power not limited hereby.

6018.3. Definition of "banking institution."

The term "banking institution", as used in this act shall be construed to mean any bank, trust company, bank and trust company, stock savings bank or mutual savings bank, which is now or may hereafter be organized under the laws of this state. [L. '37, Ch. 197, § 1. Approved and in effect March 18, 1937.]

6018.4. Contract with Federal Deposit Insurance Corporation—authorization—may subscribe to stock of corporation. Any banking institution now or hereafter organized under the laws of this state is hereby empowered, on the authority of its board of directors, or a majority thereof, to enter into such contracts, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be available or enure to banking institutions or to their depositors, creditors, stockholders, conservators or liquidators, by virtue of those provisions of Section 12B of the federal reserve act, as amended, which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or of any other act or resolution of congress to aid, regulate

or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation, and to comply with the lawful regulations and requirements from time to time issued or made by such corporation. [L. '37, Ch. 197, § 2. Approved and in effect March 18, 1937.]

6018.5. Appointment of corporation as agent—power of superintendent of banks. In the event any banking institution, the deposits in which are in any extent insured by the Federal Deposit Insurance Corporation created by section 12B of the federal reserve act as amended, is closed on account of inability to meet the demands of its creditors, the superintendent of banks may appoint said corporation agent, without bond, to assist him or act for him in the liquidation of such banking institution. [L. '37, Ch. 197, § 3. Approved and in effect March 18, 1937.]

6018.6. Subrogation of corporation to rights of closed banking institution. Whenever any banking institution shall have been closed as aforesaid, and said Federal Deposit Insurance Corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, said corporation, whether or not it shall have been appointed agent of the superintendent of banks in the liquidation of such closed banking institution, as herein provided, shall be and become subrogated by operation of law to all rights against such closed banking institution of each owner of a claim for deposit to the extent now or hereafter necessary to enable the Federal Deposit Insurance Corporation, under federal law, to make insurance payments available to depositors of closed insured banks. [L. '37, Ch. 197, § 4. Approved and in effect March 18, 1937.]

6018.7. Superintendent may accept examination made by corporation—duty of banking institutions not limited hereby. The superintendent of banks is authorized to accept, in his discretion, in lieu of any examination authorized by the laws of this state to be conducted by his department of a banking institution the examination that may have been made of same within a reasonable period by the Federal Deposit Insurance Corporation; provided, a signed copy of said examination is furnished to said superintendent of banks. Said superintendent of banks may, also in his discretion, accept any report relative to the condition of a banking institution which

may have been obtained by said corporation within a reasonable period, in lieu of a report authorized by the laws of this state to be required of such institution by his department; provided a copy of such report is furnished to said superintendent of banks, and may in his discretion disclose to said corporation, or any official or examiner thereof, any information possessed by the office of said superintendent of banks with reference to the conditions or affairs of any such insured institution.

Said superintendent of banks may furnish to said corporation, or to any official or examiner thereof, a copy or copies of any or all examinations made of any such banking institutions and of any or all reports made by same.

Nothing in this section shall be construed to limit the duty of any banking institution in this state, deposits in which are to any extent insured under the provisions of section 12B of the federal reserve act, as amended, or of any amendment of or substitution for the same, to comply with the provisions of said act, its amendments or substitutions, or the requirements of said corporation relative to examinations and reports, nor to limit the powers of the superintendent of banks with reference to examinations and reports under existing law. [L. '37, Ch. 197, § 5. Approved and in effect March 18, 1937.]

6018.8. Borrowing money from and selling assets of closed bank to corporation—power not limited hereby. Any banking institution, which is now or may hereafter be closed on account of inability to meet the demands of its depositors or by action of the superintendent of banks or by action of its directors or in the event of its insolvency or suspension, the superintendent of banks or his agent, with the permission of the court having jurisdiction thereof, may borrow from said corporation and furnish any part or all of the assets of said institution to said corporation as security for a loan from same. Said superintendent of banks upon the order of a court of record of competent jurisdiction may sell to said corporation any part or all of the assets of such institution. The provisions of this section shall not be construed to limit the power of any banking institution, or the superintendent of banks to pledge or sell assets in accordance with any existing law. [L. '37, Ch. 197, § 6. Approved and in effect March 18, 1937.]

Section 7 is partial invalidity saving clause.

Section 8 repeals conflicting laws.

CHAPTER 27

INSURANCE COMPANIES—GENERAL REGULATIONS

Section

- 6127.1. Resident agent—writing of insurance must be done through—exceptions—agent to countersign policies—commission—place of issuance of policy—records—rebates—signature of agent on application.
- 6127.2. Application of act—exceptions.
- 6127.3. Violations of act—penalties—fines—disposition—revocation of authority—appeal.
- 6127.4. Reauthorization to do business—conditions precedent.
- 6127.5. Repeals.

6112. License fee.

1938. Where a foreign state imposed a premium tax on foreign insurance companies doing business in that state higher than the tax imposed by Montana on such foreign companies but allowed a deduction for taxes paid on real estate in the foreign state owned by a foreign company, while the Montana statute made no such deduction, it was held that section 6155, authorizing a tax on foreign corporations equal to the tax imposed on foreign corporations by such foreign state, did not apply. *Occidental Life Ins. Co. v. Holmes*, 107 Mont. 48, 80 P. (2d) 383.

6127.1. Resident agent—writing of insurance must be done through—exceptions—agent to countersign policies—commission—place of issuance of policy—records—rebates—signature of agent on application. It shall be unlawful for any insurance company or association, including life, fire, casualty, surety or indemnity corporations or associations doing business within the state of Montana (except so-called assessment life insurance companies, as hereinafter provided, and fraternal benefit societies and rural mutual insurance companies) to make, write, place, or cause to be made, written or placed in this state, any policy, bond, duplicate policy, contract of insurance or contract of indemnity of any kind or character, or any general floating group policy upon persons or property, or upon any insurable risk, resident, situated or located in this state, unless written through and countersigned by an agent of this state, duly licensed to transact insurance, bonding or indemnity business therein.

A resident agent shall countersign all policies, bonds or contracts of indemnity so issued, and shall receive the full commission on all such policies, bonds or contracts of insurance on [or] indemnity, when the premium is paid, to the end that the state may receive the tax required by law to be paid on the premiums collected for insurance on all persons, property or other insurable risks resident, situated or located within this state; provided that nothing in this act shall be construed to

prevent any insurance company or association from issuing policies, bonds or contracts at its principal or department offices, covering property or persons or other insurable or indemnity risks resident, situated or located in this state; provided, however, such policies are issued upon application procured and submitted to such company or association by a resident agent, who shall keep a record of all such policies, bonds or contracts of indemnity so issued, and countersign the same, and that said resident agent or agents shall receive the full commission on all policies when premium is paid. It shall be unlawful for any such resident agent to rebate or divide such commission, with intent to evade the provisions of this act; and any violation of this provision shall be punished as provided in sections 6123 and 6124 revised codes of Montana 1935. Provided, however, that the signature of a resident agent on an application for a life insurance policy shall be deemed a countersigning of the policy if a copy of such application is attached to the policy. [L. '37, Ch. 95, § 1. Approved and in effect March 12, 1937.]

6127.2. Application of act—exceptions. No provision of this act is intended to, nor shall it, apply to direct insurance covering the rolling stock of railroad corporations or property in transit while in the possession and custody of railroad corporations or other common carriers, or of property, persons or other risks which were not located, resident nor situated within the state of Montana when said insurance, bond or contract of indemnity was originally written thereon.

Nor shall any of the provisions of this act apply to assessment life insurance companies, as defined in section 6293 revised codes of Montana 1935, nor to fraternal benefit societies having lodge systems, as defined in section 6305 et seq. revised codes of Montana 1935, nor to mutual rural insurance companies, as defined in sections 6170 to 6205 revised codes of Montana 1935, each and all of which said companies, societies and associations are hereby expressly excluded from the operation of this act. [L. '37, Ch. 95, § 2. Approved and in effect March 12, 1937.]

6127.3. Violations of act—penalties—fines—disposition—revocation of authority—appeal. Any life insurance companies, fire insurance companies, surety or indemnity companies or associations wilfully failing to observe or comply with the provisions of this act shall be guilty of a misdemeanor and shall be subject to and liable to pay a penalty of five hundred dollars (\$500.00) for each violation thereof, and for each failure to observe and comply

with the provisions of said section, after notice and hearing by the state commissioner of insurance, in the same manner as provided by law for the investigation and punishment by the state commissioner of insurance for other infractions and violations of the insurance laws of this state. Such fines and penalties shall be handled and disposed of by the state commissioner of insurance in the same manner as license fees are now handled and disposed of by said commissioner.

After such notice and hearing the commissioner of insurance may, in his discretion, revoke the certificate of authority issued to any corporation, society or agent on his being satisfied, after notice and hearing as provided by law, that such corporation, society or agent has violated any of the provisions of this act. This penalty is in addition to the other penalties herein described.

Any corporation, society or agent whose certificate of authority has been revoked may, within fifteen (15) days thereafter, appeal from said order to any district court of this state having jurisdiction over the persons, corporations or agents concerned. [L. '37, Ch. 95, § 3. Approved and in effect March 12, 1937.]

6127.4. Reauthorization to do business—conditions precedent. Any insurance company, indemnity corporation or surety corporation or association whose authority to transact business in this state shall have been so revoked shall not again be authorized or permitted to transact business within the state of Montana until it shall have paid the amount of any fine or fines assessed by the state commissioner of insurance, and shall have filed in the office of the state auditor a certificate signed by its president or other chief executive officer to the effect that the terms and obligations of the provisions of this act are accepted by it as part of the conditions of its right and authority to transact business in this state. [L. '37, Ch. 95, § 4. Approved and in effect March 12, 1937.]

6127.5. Repeals. Section 6164 and all other acts and parts of acts in conflict herewith are hereby repealed. [L. '37, Ch. 95, § 5. Approved and in effect March 12, 1937.]

CHAPTER 28

STOCK AND MUTUAL INSURANCE COMPANIES OTHER THAN LIFE

Section

6164. Repealed.

6155. Deposit of security or payments required of domestic companies doing business in other states—reciprocal deposits and charges to be required.

1938. ✓ The purpose of Const., Art. 15, § 11, "is to prevent granting to foreign corporations any rights or immunities not enjoyed by corporations of the same or similar kind created under the laws of and doing business in this state," and does not apply to an insurance company of a foreign state whose statutes do not place a heavier burden on Montana corporations doing business in that state than Montana places on corporations of that state doing business in Montana. *Occidental Life Ins. Co. v. Holmes*, 107 Mont. 48, 80 P. (2d) 383.

1938. ✓ Where a foreign state imposed a premium tax on foreign insurance companies doing business in that state higher than the tax imposed by Montana on such foreign companies but allowed a deduction for taxes paid on real estate in the foreign state owned by a foreign company, while the Montana statute made no such deduction, it was held that section 6155, authorizing a tax on foreign corporations equal to the tax imposed on foreign corporations by such foreign state, did not apply. *Occidental Life Ins. Co. v. Holmes*, 107 Mont. 48, 80 P. (2d) 383.

1938. ✓ The purpose of this section "is to place on the foreign corporation the same total burden for doing business here that the state where the foreign corporation has its domicile would impose upon a Montana corporation doing a like business there." *Occidental Life Ins. Co. v. Holmes*, 107 Mont. 48, 80 P. (2d) 383.

6164. Repealed. See § 6127.5.

CHAPTER 29

MUTUAL HAIL INSURANCE AND MUTUAL FIRE, LIGHTNING, AND OTHER CASUALTY INSURANCE OF FARM PROPERTY AND STOCK

Section

6175a. Safety or reserve fund—power to create—limit of fund—use.

6175b. Same—investment—securities allowable.

6175a. Safety or reserve fund—power to create—limit of fund—use. Any mutual insurance company as defined under and by virtue of sections 6170 to 6205 inclusive of the revised codes of Montana, 1935, may create a safety or reserve fund for the purpose of paying any claim or claims for losses on any policies of insurance issued by said company or for the purpose of paying any lawful expenses or obligations which said company may from time to time incur. Such reserve fund shall not exceed an amount equal to three (3%) per cent of the total amount of insurance which may be in force in said company at any one time. Provided that such safety or reserve fund shall not be used for any purpose what-

soever except as herein authorized. [L. '39, Ch. 121, § 1. Approved and in effect March 3, 1939.]

6175b. Same—investment—securities allowable. When so directed by a majority vote of the members present of the company the directors shall have the power to invest the reserve fund of the company or any part thereof in bonds or other securities of the United States government, or any government agency, or any investment the safety of which is guaranteed by the United States, in general obligation bond [bonds] or warrants of any state, county or city as are recommended by the state auditor and approved by the state examiner. At the time of purchase such investments must be stamped with the name of the company with the following notation printed thereon, "Negotiable only upon the order of the directors of such company". [L. '39, Ch. 121, § 2. Approved and in effect March 3, 1939.]

Section 3 repeals conflicting laws.

CHAPTER 30

MUTUAL RURAL INSURANCE COMPANIES

Section

6205.1. Reinsurance—authorization.

6185. Formation of mutual rural insurance company.

1937. Where an insurance policy carried no clause of nonliability in case property insured was burned by the insured while insane, the insurer could not, in such a case, set off insured's tort against recovery for fire loss. *Hier v. Farmers Mutual Ins. Co.*, 104 Mont. 471, 67 P. (2d) 831.

6191. What matters may be embraced in by-laws.

1937. Where an insurance policy carried no clause of nonliability in case property insured was burned by the insured while insane, the insurer could not, in such a case, set off insured's tort against recovery for fire loss. *Hier v. Farmers Mutual Ins. Co.*, 104 Mont. 471, 67 P. (2d) 831.

6205.1. Reinsurance — authorization. In addition to the powers now granted by law to rural mutual insurance companies organized under sections 6170 to 6205 of the revised codes of Montana of 1935, said corporation shall have the power to cede and accept insurance from any other rural insurance corporation organized under the above named sections. It being the intention of this act to permit the assignment or transfer of liability under any insurance policy or policies either in whole or in part written by one or more rural mutual insurance companies to any other rural mutual

insurance company organized under the laws of the state of Montana. [L. '39, Ch. 95, § 1. Approved and in effect March 1, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 33

LIFE INSURANCE COMPANIES

Section

6269. The investment of funds and loaning of money—kind of investments—"improved real estate" defined.

6269.1. Construction of act—repeals.

6339. Death and annuity benefits on lives of children—maximum benefits payable.

6269. The investment of funds and loaning of money — kind of investments — "improved real estate" defined. The capital stock and reserve funds required by law in accordance with section 6261 of chapter 33 of the revised codes of Montana, 1935, of any domestic life insurance company incorporated under the laws of Montana, may be invested as follows:

(a) In or upon securities which are direct obligations of the United States government; securities which are guaranteed as to principal and interest by the United States government; securities issued by instrumentalities of the United States government, and securities issued by or guaranteed by the government of the Dominion of Canada.

(b) In securities which are direct obligations of, or secured by the pledge of specific revenues by, any state of the United States, or the District of Columbia, or any province of the Dominion of Canada.

(c) In securities which are direct obligations of, or secured by the pledge of specific revenues by, any county, city, town, village, duly organized school district, or other political subdivision or municipal corporation of any state of the United States, or the District of Columbia, or of any province of the Dominion of Canada.

(d) In evidences of indebtedness, having preference over common and preferred stock issues, issued or guaranteed by any railroad, street railway, public utility, or industrial corporation organized and operated under the laws of the United States or the Dominion of Canada, or any state, or province thereof.

(e) In first mortgages on improved unencumbered real estate or the entire issue of bonds secured thereby, located within any of the states of the United States, or the District of Columbia, provided that the appraised value of such real estate is worth at least fifty per cent (50%) more than the sum so invested, said worth to be substantiated by an experi-

enced real estate appraiser of the board of directors making or authorizing such investment on behalf of the company.

By improved real estate is meant all farm land which is used for tillage or pasture, and all real property on which permanent buildings suitable for residence or commercial use are situated.

(f) In loans secured by promissory notes amply secured by the pledge of any securities which such insurance companies by this act are authorized to invest in; and may also make loans upon the securities of its own policies, provided that no loan on any policy shall exceed the reserve value thereof.

(g) No investment or loan, except policy loans, shall be made by any such life insurance company, unless the same shall first have been authorized by the board of directors, or by a committee thereof charged with the duty of supervising such investment or loan. No such company shall subscribe to, or participate in, any underwriting of the purchase or sale of securities or property, or enter into any transaction for such purchase or sale on account of said company, jointly with any other person, firm, or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its board of directors. [L. '39, Ch. 173, § 1, amending R. C. M. 1935, § 6269. Approved and in effect March 17, 1939.]

6269.1. Construction of act—repeals. This act shall in no way be construed to change, repeal, or amend any part of the present insurance code of the state of Montana other than section 6269 of chapter 33, of the revised codes of Montana of 1935. [L. '39, Ch. 173, § 2, amending R. C. M. 1935, § 6269. Approved and in effect March 17, 1939.]

6339. Death and annuity benefits on lives of children—maximum benefits payable. Any fraternal benefit society authorized to do business in this state and operating on the lodge plan, may provide in its constitution and by-laws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of one (1) and sixteen (16) years at next birthday, upon the application of some adult person, as the laws of such society may provide, upon whom such child is dependent in whole or in part for support and maintenance. Any such society may, at its option, organize and operate branches for such children and membership in local lodges and initiation therein shall not be required of such children, or shall they have any voice in the manage-

ment of the society. The total benefit payable, as above provided shall in no case exceed the following amounts at ages at next birthday at time of death, respectively as follows: One (1), one hundred dollars (\$100.00); two (2), two hundred dollars (\$200.00); three (3), three hundred dollars (\$300.00); four (4), four hundred dollars (\$400.00); five (5), five hundred dollars (\$500.00); six (6), six hundred dollars (\$600.00); seven (7), seven hundred dollars (\$700.00); eight (8), eight hundred dollars (\$800.00); nine (9), nine hundred dollars (\$900.00); ten (10), one thousand dollars (\$1,000.00); eleven (11) to sixteen (16), two thousand five hundred dollars (\$2,500.00). [L. '39, Ch. 22, § 1, amending R. C. M. 1935, § 6339. Approved and in effect February 15, 1939.]

Section 2 repeals conflicting laws.

6276. Certificate of authority on compliance with law.

1938. ✓ Where a foreign state imposed a premium tax on foreign insurance companies doing business in that state higher than the tax imposed by Montana on such foreign companies but allowed a deduction for taxes paid on real estate in the foreign state owned by a foreign company, while the Montana statute made no such deduction, it was held that section 6155, authorizing a tax on foreign corporations equal to the tax imposed on foreign corporations by such foreign state, did not apply. *Occidental Life Ins. Co. v. Holmes*, 107 Mont. 48, 80 P. (2d) 383.

CHAPTER 35

FRATERNAL BENEFIT SOCIETIES

6311. Beneficiaries, who may be—change of beneficiary.

1937. ✓ One who does not occupy some of the degrees of relationship with the insured enumerated in section 6311 may not be the beneficiary of a fraternal insurance policy. *Stevens v. Woodmen of the World*, 105 Mont. 121, 71 P. (2d) 898.

1937. ✓ Though falsely stating that she was the insured's cousin, the insured's common-law wife was held a qualified beneficiary entitled to the proceeds of a policy. *Stevens v. Woodmen of the World*, 105 Mont. 121, 71 P. (2d) 898.

1937. ✓ To attempt to name a person who was not qualified by law to be a beneficiary does not ipso facto invalidate the entire policy. *Stevens v. Woodmen of the World*, 105 Mont. 121, 71 P. (2d) 898.

CHAPTER 37

BUILDING AND LOAN ASSOCIATIONS

Section

6355.13. Powers and duties of building and loan associations—assessments and collections from members—withdrawal of stock credits—cancellation of stock—issuance

Section

of stock to minors—acquisition and conveyance of property—borrowing money and pledging assets—loans to members—investment of money—loans to other associations — dissolution—consolidation of associations.

6355.13a. Repeals.

6356.1-6356.3. National housing act.

6374.1-6374.7. Repealed.

6355.13. Powers and duties of building and loan associations—assessments and collections from members—withdrawal of stock credits—cancellation of stock—issuance of stock to minors—acquisition and conveyance of property—borrowing money and pledging assets—loans to members—investment of money—loans to other associations — dissolution — consolidation of associations. Every building and loan association is a creature of the law having certain powers and duties of a natural person and as such has power:

(1) Of continual succession, by its corporate name;

(2) To sue and be sued, in any court;

(3) To make and use a common seal and alter same at pleasure;

(4) To appoint such officers or agents as the business of the corporation may require, and to allow them suitable compensation;

(5) To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

(6) Such associations shall have power to issue stock to members on such terms and conditions as the constitution and by-laws may provide, but no association shall issue preferred stock.

(7) To assess and collect from members dues on stock and interest on loans at the times and in the amount as provided for in the constitution and by-laws. The combined total of the amounts paid to an association for interest, commission, bonus, discount and other similar charges, less a proper deduction for all dividends, refunds, and cash credits of all kinds, shall not create an actual net cost to the borrower in excess of the maximum lawful contract rate of interest in this state. Interest not exceeding the maximum lawful contract rate may also be charged on unpaid interest payments from the time such interest payments are due. Interest, not exceeding the lawful contract rate, may also be charged and collected on delinquent stock payments when such unpaid payments are credited with dividends. Said interest shall in no event be at a rate exceeding the rate per centum of the divi-

dend declared on the same unpaid stock payments. No association shall charge or collect from any stockholder, member or borrower, any fines, premiums, or penalties of any kind whatsoever. Any officer, agent or employee of any association collecting or attempting to collect any penalty, fine or premium of any kind whatsoever or any interest at a rate higher than provided in the note or other evidence of debt and in this act, shall be guilty of a misdemeanor.

(8) To permit members to withdraw all or part of their stock credits at such times and upon such terms, as the constitution and by-laws may provide; provided that no charge or fee, except as herein provided, shall be made against any member who withdraws his stock, after having given thirty (30) days' notice of such withdrawal; provided, also, that no fine of any description shall be made upon the par value of such stock or upon the declared dividends because of such withdrawal. Any member who withdraws his stock or whose stock is matured, shall be entitled to receive all dues paid in and all dividends declared less interest, if any, as provided in subsection 7, less a reasonable membership fee not exceeding two (2) per centum of the par value of each share of stock and less a pro rata share of all losses, if any, which have occurred, and no other fine or assessments shall be made against such stock. Applications for withdrawal are to be registered on the books of the association in the order received and one-half of all cash collections, not required to meet outstanding contracts, must be used for the payment of the matured stock and of the withdrawals in the order registered; provided, however, that the other half of such collections each month may be used for the payment of withdrawals other than in the order registered, but no member shall receive more than one hundred dollars (\$100.00) in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money and all fixed charges.

(9) To cancel shares of stock upon which all credits have been withdrawn, or upon which loans have been cancelled or stock upon which no payments have been made for a period of six (6) months, by returning to the stockholders all credits, if any, and reissue such shares as new stock.

(10) To issue stock to minors and permit the same to be withdrawn as other stock, and

the receipt of such minor shall be a valid acquittance if his rights have been fully secured to him.

(11) To acquire, hold, encumber and convey such real estate and personal property as may be necessary for the transaction of its business, or necessary to enforce or protect its securities. Provided, not over ten (10) per cent. of the assets of any association shall be invested in home office buildings, furniture and fixtures. Also ownership of other real property acquired in any manner or for any purpose shall not be held for more than five (5) years, except by permission of the superintendent of banks.

(12) To borrow money, only when necessary not exceeding twenty (20) per centum of its assets, and issue its promissory note therefor; provided, that the assets and securities of an association shall not be pledged or hypothecated to secure its borrowed money or for any other purpose, without the consent of the superintendent of banks. However, if the superintendent of banks determines that it is advisable to pledge assets in order that funds may be secured he may authorize such pledging or hypothecation; but in no event shall the margin of security pledged exceed twenty-five (25) per centum of the funds so borrowed; also to borrow money from the federal home loan bank upon such term as may now or hereafter be required by the federal home loan bank, and to execute the promissory note of the corporation therefor, and to pledge or hypothecate any of the assets of the corporation to secure the repayment of said loan, with interest, in accordance with the federal home loan bank act, and the rules and regulations adopted or to be adopted thereunder.

(13) To make loans to members on the security of the shares of the association, and also on their notes secured by first mortgages on improved real estate, including suburban homes, but not on farm lands or mining property, for not to exceed seventy-five (75) per centum of the actual value of such real estate, and upon such terms and conditions as may be provided in the constitution and by-laws; provided, however, that in all cases where the promissory note, or other written evidence of the loan made by any building and loan association required the payment of said loan, or total aggregate sum of principal and interest in periodic installments, said promissory note, or other written evidence of debt shall specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each periodic payment; provided, further, that when the note or other evidence of debt does not require the payment of said loan in periodic installments,

the note or other evidence of debt shall specifically state the actual rate of interest to be charged the borrower.

Provided, however, that in all notes and mortgages now in force which do not specify the actual rate of interest charged the borrower upon the unpaid balance of the principal at each periodic payment, all payments made on the said notes must be distributed by crediting the same, first, upon the interest on the unpaid balance of the loan at the rate actually earned under the terms of the notes and mortgages, and the remainder upon the principal of the loan, and no charges or reductions from any of said periodic payments shall be permitted by any such association not specifically provided for in said promissory note or other evidence of such loan;

(14) To cancel such loans and release the securities on such terms as the board of directors may provide. But any borrower may have his loan cancelled upon the following terms, to-wit:

By paying all the interest up to date of cancellation and the sum actually borrowed, less payments on principal, dues paid in and the dividends credited;

(15) To invest the money of the association in:

(a) The bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures and other securities and obligations of any federal home loan bank created under the laws of the United States;

(b) The bonds and warrants of any state and of any county, city or school district of the state of Montana;

(c) The obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the national housing act;

(d) Improved real estate which has been sold under contract, including suburban homes, but not including farm lands or mining property; provided, however, that the total amount remaining so invested, excluding real estate otherwise acquired, shall at no time exceed fifteen (15) per cent. of its assets; and provided further, that in no specific case shall the amount so invested exceed eighty-five (85) per cent. of the price stipulated in the contract of sale or eighty-five (85) per cent. of the value of the property so purchased, whichever is the lesser.

(e) Not to exceed ten (10) per cent. of the association assets in other bonds and securities.

(16) To loan money to other building and loan associations;

(17) To make such semi-annual distribution of all the earnings after payment of expenses and setting aside a sum for the contingent funds as herein provided;

(18) To amend its articles of incorporation by changing the name, place of business, the number of directors; to increase or decrease the capital stock and provide for its own continual succession by a majority vote of its directors; provided that no such amendments shall be effected until first approved by the superintendent of banks;

(19) To dissolve the corporation in accordance with the provisions of this chapter;

(20) To provide by constitution and by-laws, adopted or amended, by its board of directors for the proper exercise of the powers herein granted and the conduct and management of its affairs;

(21) All such other powers as are necessary and proper to enable such corporation to carry out the purpose of its organization.

(22) Any two (2) or more building and loan associations, by and with the consent and approval of the superintendent of banks, may consolidate and unite and become incorporated in one (1) body, with or without any dissolution or division of the funds or property of any such association, or any such association may transfer its engagements, funds and property to any like association upon such terms as may be agreed upon by a majority vote of the respective board of directors, and ratified by a two-thirds (2/3) vote of the shares present and voting in person or by proxy at a special meeting or meetings of the stockholders of the respective associations convened for that purpose, upon notice given as provided by law, said notice to state the object of the meeting. No such transfer shall prejudice any right of any creditor of such association. [L. '39, Ch. 80, § 1, amending R. C. M. 1915, § 6355.13. Approved and in effect March 1, 1939.]

6355.13a. Repeals. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that this act shall not be so considered or construed as to in any way modify or repeal the provisions of sections 6356.1, 6356.2, and 6356.3 of the Montana revised codes of 1935, relating to transactions under the provisions of the national housing act as amended. [L. '39, Ch. 80, § 2. Approved and in effect March 1, 1939.]

6356.1-6356.3. National housing act.

Note. These sections are not modified or repealed by L. '39, Ch. 80, § 1. See § 6355.13a.

6374.1-6374.7. Repealed. [L. '39, Ch. 27, § 1. Approved and in effect February 15, 1939.]

CHAPTER 38A

RURAL ELECTRIC COOPERATIVE ACT

Section

- 6396.1. Short title.
- 6396.2. Purpose of act—production of electric energy—corporations—"cooperatives" defined.
- 6396.3. Corporations — powers — generation and distribution of electric energy — making loans—acquisition of electric systems—borrowing money — eminent domain — exercise.
- 6396.4. Name.
- 6396.5. Incorporators.
- 6396.6. Articles of incorporation.
- 6396.7. By-laws.
- 6396.8. Members — by-laws — annual meeting — special meeting — place — notice — quorum — voting.
- 6396.9. Board of trustees—number—qualifications —removal — salaries — attendance at meetings—fees and expenses — terms — classes—quorum—powers.
- 6396.10. Voting districts.
- 6396.11. Officers.
- 6396.12. Amendment of articles of incorporation — requirements—change of principal place of business.
- 6396.13. Consolidation — requirements — vote of members—articles of consolidation.
- 6396.14. Merger — requirements — vote of members—articles of merger.
- 6396.15. Effect of consolidation or merger — liabilities.
- 6396.16. Conversion of existing corporations — approval by directors or trustees—vote of members or stockholders—articles of conversion—"articles of incorporation" includes articles of conversion.
- 6396.17. Initiative by members.
- 6396.18. Dissolution — cooperative which has not commenced business — one which has — election to dissolve—certificate—winding up affairs—articles of dissolution.
- 6396.19. Filing of articles.
- 6396.20. Refunds to members—fund for education in cooperation.
- 6396.21. Disposition of property.
- 6396.22. Non-liability of members for debts of cooperative.
- 6396.23. Recordation of mortgages.
- 6396.24. Waiver of notices.
- 6396.25. Trustees, officers, or members—as authorized notaries—authority to act.
- 6396.26. Foreign corporations extending lines into state—requirements—secretary of state as agent to accept service of process — designation—suits—pledging property for debts.
- 6396.27. Fees.
- 6396.28. Exemption from excise taxes—license fee.
- 6396.29. Exemption from jurisdiction of the public service commission.
- 6396.30. Definitions.
- 6396.31. Construction of act.

6396.1. Short title. This act may be cited as the "rural electric cooperative act". [L. '39, Ch. 172, § 1. Approved and in effect March 17, 1939.]

6396.2. Purpose of act—production of electric energy—corporations—“cooperatives” defined. Cooperative, non-profit, membership corporations may be organized under this act for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, in which electrical current and service is not otherwise available, from existing facilities and plants. Cooperations organized under this act and corporations which become subject to this act in the manner hereinafter provided are hereinafter referred to as “cooperatives”. [L. '39, Ch. 172, § 2. Approved and in effect March 17, 1939.]

6396.3. Corporations — powers—generation and distribution of electric energy—making loans—acquirement of electric systems—borrowing money—eminent domain—exercise. A cooperative shall have power:

(a) To sue and be sued, in its corporate name;

(b) To have perpetual existence;

(c) To adopt a corporate seal and alter the same at pleasure;

(d) To generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum (10%) of the number of its members;

(e) To make loans to person to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises and installing therein electrical and plumbing fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such electrical and plumbing fixtures, appliances, apparatus and equipment, and to accept, or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(f) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants;

(g) To become a member in one or more other cooperatives or corporations or to own stock therein;

(h) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to

own, hold, use, equip, maintain, and operate, and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, lands, buildings, structures, dams, plants and equipment, and any and all kinds and classes of real or personal property whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

(i) To purchase or otherwise acquire, and to own, hold, use and exercise and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber, franchises, rights, privileges, licenses, rights of way and easements;

(j) To borrow money and otherwise contract indebtedness, and to issue notes, bonds and other evidences of indebtedness therefor, and to secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues or income;

(k) To construct, maintain and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges and causeways, and upon, under and across all publicly-owned lands, subject, however, to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems;

(L) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems;

(m) To conduct its business and exercise any or all of its powers within or without this state;

(n) To adopt, amend and repeal by-laws; and

(o) To do and perform any and all other acts and things, and to have and exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized. [L. '39, Ch. 172, § 3. Approved and in effect March 17, 1939.]

6396.4. Name. The name of each cooperative shall include the words “electric” and “cooperative”, and the abbreviation “Inc.”,

provided, however, such limitations shall not apply if, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name. The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of, or authorized to transact business in, this state. The words "electric" and "cooperative" shall not both be used in the name of any corporation organized under the laws of, or authorized to transact business in, this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this act. [L. '39, Ch. 172, § 4. Approved and in effect March 17, 1939.]

6396.5. Incorporators. Five or more natural persons, or two or more cooperatives, may organize a cooperative in the manner hereinafter provided. [L. '39, Ch. 172, § 5. Approved and in effect March 17, 1939.]

6396.6. Articles of incorporation. (a) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this act, shall be signed and acknowledged by each of the incorporators, and shall state:

- (1) The name of the cooperative;
- (2) The address of its principal office;
- (3) The names and addresses of the incorporators;
- (4) The names and addresses of the persons who shall constitute its first board of trustees; and

(5) Any provisions not inconsistent with this act deemed necessary or advisable for the conduct of its business and affairs.

(b) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this act.

(c) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this act. [L. '39, Ch. 172, § 6. Approved and in effect March 17, 1939.]

6396.7. By-laws. The original by-laws of a cooperative shall be adopted by its boards of trustees. Thereafter by-laws shall be adopted, amended or repealed by its members. The by-laws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not incon-

sistent with this act or with the articles of incorporation. [L. '39, Ch. 172, § 7. Approved and in effect March 17, 1939.]

6396.8. Members—by-laws—annual meeting—special meeting—place—notice—quorum—voting. (a) No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy furnished by the cooperative when such electric energy shall be available through its facilities. The by-laws may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or refuse to use electric energy made available by the cooperative or if electric energy shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof. Membership in the cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect of membership.

(b) An annual meeting of the members shall be held at such time as shall be provided in the by-laws.

(c) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than ten per centum (10%) of the members, or by the president.

(d) Meetings of members shall be held at such place as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held in the city or town in which the principal office of the cooperative is located.

(e) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten (10) nor more than twenty-five (25) days before the date of the meeting.

(f) Five per centum (5%) of all members present in person shall constitute a quorum for the transaction of business at all meetings of the members, but the by-laws may prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(g) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person, but, if the by-laws so provide, may also be by proxy or by mail, or both. If the by-laws provide for voting by proxy or by mail, they shall also

prescribe the conditions under which proxy or mail voting or both shall be exercised. In any event, no person shall vote as proxy for more than three (3) members at any meeting of the members. [L. '39, Ch. 172, § 8. Approved and in effect March 17, 1939.]

6396.9. Board of trustees—number—qualifications — removal — salaries — attendance at meetings—fees and expenses—terms—classes—quorum—powers. (a) The business and affairs of a cooperative shall be managed by a board of not less than five (5) trustees, each of whom shall be a member of the cooperative or of another cooperative which shall be a member thereof. The by-laws shall prescribe the number of trustees, their qualifications, other than those provided for in this act, the manner of holding meetings of the board of trustees and of the election of successors to trustees who shall resign, die or otherwise be incapable of acting. The by-laws may also provide for the removal of trustees from office and for the election of their successors. Without approval of the membership, trustees shall not receive any salaries for their services as trustees and, except in emergencies, shall not be employed by the cooperative in any capacity involving compensation. The by-laws may, however, provide that a fixed fee and expenses of attendance, if any, may be allowed for attendance at each meeting of the board of trustees.

(b) The trustees of a cooperative named in any articles of incorporation, consolidation, merger or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors shall have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the by-laws, at a special meeting called for that purpose, the members shall elect trustees to hold office until the next following annual meeting of the members, except as hereinafter otherwise provided. Each trustee shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

(c) The by-laws may provide that, in lieu of electing the whole number of trustees annually, the trustees shall be divided into two classes at the first or any subsequent annual meeting, each class to be as nearly equal in number as possible, with the term of office of the trustees of the first class to expire at the next succeeding annual meeting and the term of the second class to expire at the second succeeding annual meeting. At each annual meeting after such classification the number of trustees equal to the number of the class

whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting.

(d) A majority of the board of trustees shall constitute a quorum.

(e) If a husband and wife hold joint membership in a cooperative, either one, but not both, may be elected a trustee.

(f) The board of trustees may exercise all of the powers of a cooperative except such as are conferred upon the members by this act, or its articles of incorporation or by-laws. [L. '39, Ch. 172, § 9. Approved and in effect March 17, 1939.]

6396.10. Voting districts. Notwithstanding any other provision of this act, the by-laws may provide that the territory in which a cooperative supplies electric energy to its members shall be divided into two or more voting districts and that in respect of each such voting district (1) a designated number of trustees shall be elected by the members residing therein, or (2) a designated number of delegates shall be elected by the members residing therein, or (3) both such trustees and delegates shall be elected by such members. In any such case the by-laws shall prescribe the manner in which such voting districts and the members thereof, and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees. No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail. [L. '39, Ch. 172, § 10. Approved and in effect March 17, 1939.]

6396.11. Officers. The officers of a cooperative shall consist of a president, vice-president, secretary and treasurer, who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents, or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the by-laws. [L. '39, Ch. 172, § 11. Approved and in effect March 17, 1939.]

6396.12. Amendment of articles of incorporation — requirements — change of principal place of business. (a) A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment shall be first approved by the board of trustees and shall

then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting thereon at such meeting; and

(2) Upon such approval by the members, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this act and shall state;

(a) The name of the cooperative;

(b) The address of its principal office;

(c) The date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) The amendment to its articles of incorporation. The president or vice-president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with. Such articles of amendment and affidavit shall be submitted to the secretary of state for filing as provided in this act.

(b)[e] A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office executed and acknowledged by its president or vice-president under its seal attested by its secretary, in the office of the secretary of state and also in each county office in which its articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed and paying the fees prescribed in this act in connection therewith. Such cooperative shall also, within thirty (30) days after the filing of such certificate of change of principal office in any county office, file therein certified copies of its articles of incorporation and all amendments thereto, if not already on file therein. [L. '39, Ch. 172, § 12. Approved and in effect March 17, 1939.]

6396.13. Consolidation—requirements—vote of members—articles of consolidation. Any two or more cooperatives, each of which is hereinafter designated a “consolidating cooperative”, may consolidate into a new cooperative, hereinafter designated the “new cooperative”, by complying with the following requirements:

(a) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this act and shall state: (1) the name of each consolidating cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state; (2) the name of the new cooperative and the address of its principal office; (3) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative; (4) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of memberships in respect of such converted memberships; and (5) any provisions not inconsistent with this act deemed necessary or advisable for the conduct of the business and affairs of the new cooperative;

(b) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting thereon at such meeting; and

(c) Upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each consolidating cooperative executing such articles of consolidation, shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative. Such articles of consolidation and affidavits shall be submitted to the secretary of state for filing as provided in this act. [L. '39, Ch. 172, § 13. Approved and in effect March 17, 1939.]

6396.14. Merger — requirements — vote of members—articles of merger. Any one or more cooperatives, each of which is herein-after designated a “merging cooperative”, may merge into another cooperative, herein-after designated the “surviving cooperative”, by complying with the following requirements:

(a) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this act and shall state: (1) the name of each merging cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state; (2) the name of the surviving cooperative and the address of its principal office; (3) a statement that the merging cooperatives elect to be merged into the surviving cooperative; (4) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships; and (5) any provisions not inconsistent with this act deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative;

(b) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives which are parties to such proposed merger shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each cooperative voting thereon at such meeting; and

(c) Upon such approval by the members of the respective cooperatives, parties to the proposed merger, articles of merger, in the form approved shall be executed and acknowledged on behalf of each such cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were

duly complied with by such cooperative. Such articles of merger and affidavits shall be submitted to the secretary of state for filing as provided in this act. [L. '39, Ch. 172, § 14. Approved and in effect March 17, 1939.]

6396.15. Effect of consolidation or merger—liabilities. The effect of consolidation or merger shall be as follows:

(a) The several cooperatives, parties to the consolidation or merger, shall be a single cooperative, which, in the case of a consolidation, shall be the new cooperative provided for in the articles of consolidation, and, in the case of a merger, shall be that cooperative designated in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives, parties to the consolidation or merger, except the new or surviving cooperative, shall cease;

(b) Such new or surviving cooperative shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of this act, and shall possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account, and all other choses in action, of each of the consolidating or merging cooperatives, and furthermore all and every interest of, or belonging or due, to each of the cooperatives so consolidated or merged, shall be taken and deemed to be transferred to and vested in such new or surviving cooperative without further act or deed; and the title to any real estate, or any interest therein, under the laws of this state vested in any such cooperative shall not revert or be in any way impaired by reason of such consolidation or merger;

(c) Such new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives so consolidated or merged, and any claim existing, or action or proceeding pending, by or against any of such cooperatives may be prosecuted as if such consolidation or merger had not taken place, but such new or surviving cooperative may be substituted in its place;

(d) Neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by such consolidation or merger; and

(e) In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative; and in the case of a merger, the articles of incorporation of the surviving co-

operative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger. [L. '39, Ch. 172, § 15. Approved and in effect March 17, 1939.]

6396.16. Conversion of existing corporations—approval by directors or trustees—vote of members or stockholders—articles of conversion—“articles of incorporation” includes articles of conversion. Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy in rural areas may be converted into a cooperative and become subject to this act with the same effect as if originally organized under this act by complying with the following requirements:

(a) The proposition for the conversion of such corporation into a cooperative and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this act and shall state: (1) the name of the corporation prior to its conversion into a cooperative; (2) the address of the principal office of such corporation; (3) the date of the filing of its articles of incorporation in the office of the secretary of state; (4) the statute or statutes under which such corporation was organized; (5) the name assumed by such corporation; (6) a statement that such corporation elects to become a cooperative, non-profit, membership corporation subject to this act; (7) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and (8) any provisions not inconsistent with this act deemed necessary or advisable for the conduct of its business and affairs;

(b) The proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-

thirds of those members of such corporation voting thereon at such meeting, or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting;

(c) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders, of the proposition for the conversion of such corporation into a cooperative and such articles of conversion were duly complied with. Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this act; and

(d) The term “articles of incorporation” as used in this act shall be deemed to include the articles of conversion of a converted corporation. [L. '39, Ch. 172, § 16. Approved and in effect March 17, 1939.]

6396.17. Initiative by members. Notwithstanding any other provision of this act, there shall be submitted to the members of a cooperative any proposition embodied in a petition signed by not less than ten per centum (10%) of its members, together with any document submitted with such petition to give the effect to the proposition, either at a special meeting of the members held within forty-five (45) days after the presentation of such petition or, if the date of the next annual meeting of members falls within ninety (90) days after such presentation or if the petition so requests, at such annual meeting. The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such proposition or document shall be subject to all other applicable provisions of this act. The affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this act shall, in such case, be modified to show compliance with the provisions of this section. [L. '39, Ch. 172, § 17. Approved and in effect March 17, 1939.]

6396.18. Dissolution—cooperative which has not commenced business—one which has—election to dissolve—certificate—winding up

affairs — articles of dissolution. (a) A cooperative which has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed and acknowledged on behalf of the cooperative by a majority of the incorporators, which shall state:

- (1) The name of the cooperative;
- (2) The address of its principal office;
- (3) The date of its incorporation;
- (4) That the cooperative has not commenced business;

(5) That the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements shall have been released to the grantors;

(6) That no debt of the cooperative remains unpaid; and

(7) That a majority of the incorporators elect that the cooperative be dissolved. Such articles of dissolution shall be submitted to the secretary of state for filing as provided in this act;

(b) A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily and thereafter the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting the notice of which shall set forth such proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members voting thereon at such meeting;

(2) Upon such approval, a certificate of election to dissolve, hereinafter designated the "certificate", shall be executed and acknowledged on behalf of the cooperative by its president or vice-president, and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The certificate shall state: (a) the name of the cooperative; (b) the address of its principal office; (c) the names and addresses of its trustees; and (d) the total number of members who voted for and against the voluntary dissolution of the cooperative. The president or vice-president executing the certificate shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such certificate and affidavit shall be submitted to the secretary of state for filing as provided in this act;

(3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state;

(4) After the filing of the certificate and affidavit by the secretary of state the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for two successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located;

(5) The board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy and discharge its debts, obligations and liabilities and do all other things required to liquidate its business and affairs, and after paying or adequately providing for the payment of all its debts, obligations and liabilities, shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the seven years next preceding the date of such filing of the certificate, or, if the cooperative shall not have been in existence for such period, during the period of its existence; and

(6) When all debts, liabilities and obligations of the cooperative have been paid and discharged or adequate provision shall have been made therefor, and all of the remaining property and assets of the cooperative shall have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution which shall thereupon be executed and acknowledged on behalf of the cooperative by its president or vice-president, and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to this act and shall state: (a) the name of the cooperative; (b) the address of the principal office of the cooperative; (c) that the cooperative has heretofore delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of his office; (d) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor; (e) that all the remaining property and assets of the cooperative have

been distributed among the members in accordance with the provisions of this section; and (f) that there are no actions or suits pending against the cooperative. The president or vice-president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such articles of dissolution and affidavit accompanied by proof of the publication required in this subsection, shall be submitted to the secretary of state for filing as provided in this act. [L. '39, Ch. 172, § 18. Approved and in effect March 17, 1939.]

6396.19. Filing of articles. Articles of incorporation, amendment, consolidation, merger, conversion, dissolution, as the case may be, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this act, shall be presented to the secretary of state for filing in the records of his office. If the secretary of state shall find that the articles presented conform to the requirements of this act, he shall, upon the payment of the fees as in this act provided, file the articles so presented in the records of his office and upon such filing the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein shall be in effect. The secretary of state immediately upon the filing in his office of any articles pursuant to this act shall transmit a certified copy thereof to the county clerk of the county in which the principal office of each cooperative or corporation affected by such incorporation, amendment, consolidation, merger, conversion or dissolution shall be located. The clerk of any county, upon receipt of any such certified copy, shall file and index the same in the records of his office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section shall not invalidate such articles. The provisions of this section shall also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to subsection (b)(2) of section 18 [6396.18] of this act. [L. '39, Ch. 172, § 19. Approved and in effect March 17, 1939.]

6396.20. Refunds to members — fund for education in cooperation. Revenues of a cooperative for any fiscal year in excess of the amount thereof necessary:

(a) To defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year;

(b) To pay interest and principal obligations of the cooperative coming due in such fiscal year;

(c) To finance, or to provide a reserve for the financing of, the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(d) To provide a reasonable reserve for working capital;

(e) To provide a reserve for the payment of indebtedness of the cooperative maturing more than one (1) year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and

(f) To provide a fund which shall be not less than two per cent (2%) nor more than five per cent (5%) of the balance remaining for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative, shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds pro rated in accordance with the patronage of the cooperative by the respective members paid for during such fiscal year. Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due. [L. '39, Ch. 172, § 20. Approved and in effect March 17, 1939.]

6396.21. Disposition of property. A cooperative may not sell, mortgage, lease or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized at a duly held meeting of the members thereof by the affirmative vote of not less than two-thirds (2/3) of all of the members of the cooperative, and unless the notice of such proposed sale, mortgage, lease or other disposition or encumbrance shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, or any other provisions of law, the board of trustees of a cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebted-

edness of the cooperative to the United States of America or any instrumentality or agency thereof. [L. '39, Ch. 172, § 21. Approved and in effect March 17, 1939.]

6396.22. Non-liability of members for debts of cooperative. The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative and no member shall be liable or responsible for any debts of the cooperative. [L. '39, Ch. 172, § 22. Approved and in effect March 17, 1939.]

6396.23. Recordation of mortgages. Any mortgage, deed of trust or other instrument executed by a cooperative or foreign corporation transacting business in this state pursuant to this act; which, by its terms, creates a lien upon real and personal property then owned or after acquired and which is recorded as a mortgage of real property in each county wherein such property is located, or is to be located, shall have the same force and effect as if the instrument were also recorded or filed in the proper office in each such county as a mortgage of personal property. Recordation of any such mortgage deed of trust or other instrument shall cause the lien thereof to attach to all after acquired property of the mortgagor of the nature therein described as being mortgaged or pledged thereby immediately upon the acquisition thereof by the mortgagor and such lien shall be superior to all claims of creditors of the mortgagor and purchasers of such property and to all other liens except liens of prior record affecting such property. [L. '39, Ch. 172, § 23. Approved and in effect March 17, 1939.]

6396.24. Waiver of notices. Whenever any notice is required to be given under the provisions of this act or under the provisions of the articles of incorporation or by-laws of a cooperative, waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice. If a person or persons entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened. [L. '39, Ch. 172, § 24. Approved and in effect March 17, 1939.]

6396.25. Trustees, officers, or members—as authorized notaries—authority to act. No person who is authorized to take acknowledgments under the laws of this state shall be

disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party, by reason of being an officer, director or member of such cooperative. [L. '39, Ch. 172, § 25. Approved and in effect March 17, 1939.]

6396.26. Foreign corporations extending lines into state—requirements—secretary of state as agent to accept service of process—designation—suits—pledging property for debts. Any corporation organized under the laws of a state adjacent to this state on a non-profit or a cooperative basis for the purpose of supplying electric energy in rural areas and owning and operating electric transmission or distribution lines in such state shall be permitted to extend its lines into and transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state. Any such foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or vice-president under its corporate seal attested by its secretary, designate the secretary of state its agent to accept service of process in its behalf. In the event any process shall be served upon the secretary of state, he shall forthwith forward the same by registered mail to such corporation at the address thereof specified in such instrument. Any such corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in such courts. Any such foreign corporation may secure its notes, bonds or other evidences of indebtedness by mortgage, pledge, deed of trust or other encumbrance upon any or all of its then owned or after acquired real or personal property, assets or franchises, located or to be located in this state, and also upon the revenues and income to be derived therefrom. [L. '39, Ch. 172, § 26. Approved and in effect March 17, 1939.]

6396.27. Fees. The secretary of state shall charge and collect for;

(a) Filing articles of incorporation, five dollars (\$5.00);

(b) Filing articles of amendment, five dollars (\$5.00);

(c) Filing articles of consolidation or merger, five dollars (\$5.00);

(d) Filing articles of conversion, five dollars (\$5.00);

(e) Filing certificate of election to dissolve, five dollars (\$5.00);

(f) Filing articles of dissolution, five dollars (\$5.00); and

(g) Filing certificate of change of principal office, five dollars (\$5.00). [L. '39, Ch. 172, § 27. Approved and in effect March 17, 1939.

6396.28. Exemption from excise taxes—license fee. Cooperatives and foreign corporations, transacting business in this state pursuant to the provisions of this act, shall pay annually, on or before the first day of July, to the secretary of state, a fee of ten dollars (\$10.00) for each one hundred (100) persons or fractions thereof to whom electricity is supplied within the state, but shall be exempt from all other excise and income taxes of whatsoever kind or nature. [L. '39, Ch. 172, § 28. Approved and in effect March 17, 1939.

6396.29. Exemption from jurisdiction of the public service commission. Cooperatives and foreign corporations transacting business in this state pursuant to this act shall be exempt in all respects from the jurisdiction and control of the public service commission of this state. [L. '39, Ch. 172, § 29. Approved and in effect March 17, 1939.

6396.30. Definitions. In this act, unless the context otherwise requires:

(a) "Rural area" means any areas not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of twenty-five hundred (2500) persons;

(b) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof or any body politic; and

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to joint membership. [L. '39, Ch. 172, § 30. Approved and in effect March 17, 1939.

6396.31. Construction of act. This act shall be construed liberally. The enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things. [L. '39, Ch. 172, § 31. Approved and in effect March 17, 1939.

Section 32 is partial invalidity saving clause.

CHAPTER 40

CO-OPERATIVE MARKETING ACT

6443. Referendum.

1938. Cited in Missoula Light & Power Co. v. Hughes, 106 Mont. 355, 77 P. (2d) 1041.

6444. Marketing contract.

1938. Cited in Missoula Light & Power Co. v. Hughes, 106 Mont. 355, 77 P. (2d) 1041.

CHAPTER 42

INCORPORATION OF RELIGIOUS, SOCIAL, AND BENEVOLENT CORPORATIONS

Section

6453. Incorporation of churches, charities, benevolent and fraternal societies, and associations.

6453. Incorporation of churches, charities, benevolent and fraternal societies, and associations. Associations or persons where pecuniary profit is not the object, for the purpose of establishing and conducting churches, hospitals, lyceums, musical and scientific societies, libraries, lodges of Free and Accepted Masons, Independent Order of Odd Fellows, Independent Order of Good Templars, granges of Patrons of Husbandry, benevolent associations, beneficial associations, and all other associations, societies, or orders of like character, and social clubs and agricultural societies, stockgrowers' associations, and other associations of like character, including local, independent, and subordinate organizations, as well as state, respectively, supervisory, governing, and grand organizations and bodies of any such associations, society, or order, or for the purpose of establishing public or private charities of both, or for any other lawful purpose, may become incorporated upon complying with the provisions of this chapter. [L. '37, Ch. 88, § 1, amending R. C. M. 1935, § 6453. Approved and in effect March 11, 1937.

Section 2 repeals conflicting laws.

CHAPTER 44

INCORPORATION OF CEMETERY ASSOCIATIONS

Section

6479. May take land by purchase or gift—personal property gifts—use and disposition thereof—city may furnish water free.

6484. Annual report—duty of county attorney.

6489. Trustee or trustees of funds to be appointed by district court—title to funds vested in trustees—trust company as trustee.

Section

- 6490.. Tenure of office of trustees.
- 6491. Bond of trustee or trustees—approval.
- 6494. Title to funds vest in court until appointment of trustees—application by persons other than trustees of association—accounting.
- 6495. Recording appointments of trustee or trustees—filing.
- 6499. Investment of fund—approval.
- 6500. Compensation of trustees — maximum — source.
- 6501. Secretary of board.
- 6502. Annual report—who to make—to whom—inspection.

6479. May take land by purchase or gift—personal property gifts—use and disposition thereof—city may furnish water free. Any association incorporated agreeably to the provisions of this act may take by purchase or gift, and hold, within the county in which the certificate of their incorporation is recorded, not exceeding one hundred and sixty (160) acres of land, to be held and occupied exclusively for a cemetery for the burial of the dead, and for purposes necessary or proper thereto; such land, or such portion thereof as may from time to time be required for that purpose, shall be surveyed and divided into lots of such size as the trustees may direct, with such avenues, alleys and walks as the said trustees deem proper; and a map of such survey shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands lie, without any fees therefor. Such association may also take by gift and hold personal property, and may sell the same and apply the proceeds thereof to the care, maintenance and embellishment of said cemetery, but for no other purpose, and all real and personal estate which shall have been given or granted to any such association for the maintenance of any monument, the keeping in good order, or the embellishment of any lot or ground situated within the inclosure of such an association, shall remain forever to the uses for which the same shall have been given or granted, according to the true intent of the grantor. Any city or town in or near which a cemetery is maintained under the provisions of this act may furnish water to be used within such cemetery and for its maintenance and beautification free of charge to such cemetery association if such city or town shall so elect. [L. '39, Ch. 98, § 1, amending R. C. M. 1935, § 6479. Approved and in effect March 3, 1939.]

Section 12 repeals conflicting laws.

6484. Annual report — duty of county attorney. The trustees at each annual meeting shall make a report, in writing, which report shall be signed by at least a majority of the

members of such board, and shall contain a statement of their doings and of the affairs of the association, and an account of the receipts and disbursements during the year preceding. Such report must be duly verified and filed in the office of the clerk of the district court. Such reports shall be noticed for hearing and heard in the same manner as reports of administrators in estates of deceased persons.

It is hereby made the duty of the county attorney of the county in which cemetery is situated to act, without charge, as the legal advisor of all officers of a cemetery association and to prepare and present any and all reports required to be made by such officers. [L. '39, Ch. 98, § 2, amending R. C. M. 1935, § 6484. Approved and in effect March 3, 1939.]

Section 12 repeals conflicting laws.

6489. Trustee or trustees of funds to be appointed by district court—title to funds vested in trustees—trust company as trustee. Whenever moneys to the amount of one hundred dollars (\$100.00) shall have been received by such corporation, or association, heretofore or hereafter formed, such a fund, either from the sale of lots or from direct payments of such corporation or association toward such a fund by lot owners, or otherwise, the trustees of such association shall immediately make application to the judge of the district court for the judicial district in which the cemetery for which such trust fund exists for the appointment of a trustee or of a board of trustees of such fund and the judge of such court shall thereupon appoint a trustee or a board of trustees from a list submitted to him by the trustees of such association. Such trustee or such board shall consist of not less than one (1) nor more than five (5) persons, the exact number to rest in the discretion of the said trustees of said association. Such trustee or the members of such board of trustees of such funds may be citizens and freeholders of the state of Montana during all the time they exercise the powers of such trust. Upon the election, appointment, and qualification, as hereinafter provided, of the said trustees of such fund, all of the title to the funds included in said trust, and all of the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining, shall at once vest in him or them; or, in case of the failure of any of those so chosen and appointed, to qualify within thirty (30) days after their appointment, then the same shall vest in the one or more who shall qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, then a vacancy shall exist and the judge of said district court shall forthwith appoint from a list submitted to him by the trustees of such association some

person possessing the above qualifications to fill vacancy or vacancies in said board of trustees of such fund; provided, however, that trustees of such fund, heretofore appointed by such cemetery associations, or district courts, shall continue to hold their office as such trustees until terminated in one of the manners in this act provided.

The board of trustees shall also have the power and authority to nominate any bank which is authorized to act as a trust company in Montana under state or federal law, to be trustee of such trust fund. And in that event the district court shall make appointment of such nominee which shall serve in such capacity without bond, but shall be required to make all reports and discharge all the duties and obligations required of individual trustees. [L. '39, Ch. 98, § 3, amending R. C. M. 1935, § 6489. Approved and in effect March 3, 1939.

Section 12 repeals conflicting laws.

6490. Tenure of office of trustees. The tenure of office of the trustee or trustees of such fund shall be for the term of three (3) years, unless they permanently remove from the state of Montana, or are removed from office by the judge of said district court for good cause shown or their tenure is otherwise terminated as in this act provided. [L. '39, Ch. 98, § 4, amending R. C. M. 1935, § 6490. Approved and in effect March 3, 1939.

Section 12 repeals conflicting laws.

6491. Bond of trustee or trustees—approval. Before exercising, or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the cemetery association for which the trust is maintained, a bond in a sum equalling at least one and one-third (1-1/3) times the value of the property on hand at the time of giving such bond, with good and sufficient sureties thereto, who shall justify in the aggregate at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust until July first of the next even-numbered year after the year in which such bond shall be given, and until such trustee shall give a new bond as hereinafter provided. Upon the first day of July in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided. Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists, or some part thereof shall be situated, and shall be filed with the clerk of the district court of

the county in which such cemetery is located. Any failure so to renew bonds within thirty (30) days after the time hereinbefore provided shall be a sufficient ground for removal of any trustee within the discretion of the district court. [L. '39, Ch. 98, § 5, amending R. C. M. 1935, § 6491. Approved and in effect March 3, 1939.

Section 12 repeals conflicting laws.

6494 Title to funds vest in court until appointment of trustees—application by persons other than trustees of association—accounting. In the case of the failure of the trustees of such an association to make application to the judge of said district court for the appointment of a board of trustees of such fund, as provided in section 6489, or in the case of the death, removal, resignation, or disability of all of the members of such board, the said rights, titles, interests, authorities, powers, franchises and trusts, until the appointment and qualification of a new board of trustees of such fund shall vest in the district court of the county in which such cemetery, or the greater part thereof, shall be situated. In such cases such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person interested and upon notice of other persons interested, as the judge of said court may order. The trustee or trustees appointed by the judge of said court under the provisions of this section, shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under any other sections of this act. Such trustee or such board of trustees must annually, or oftener if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated, a duly verified account showing a detailed statement of all moneys collected, of all securities on hand, together with all moneys disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time. Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the cemetery association, and any trustee of the said trust fund, shall have the right to make any application to the court provided for in this chapter. [L. '39, Ch. 98, § 6, amending R. C. M. 1935, § 6494. Approved and in effect March 3, 1939.

Section 12 repeals conflicting laws.

6495. Recording appointments of trustee or trustees—filing. All instruments of appointment of a trustee or of a board of trustees of

such funds shall be recorded with the secretary of the association establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such association is located. [L. '39, Ch. 98, § 7, amending R. C. M. 1935, § 6495. Approved and in effect March 3, 1939.

Section 12 repeals conflicting laws.

6499. Investment of fund—approval. The principal of such fund may be invested in the way in which trust funds are permitted to be invested in the state of Montana and not otherwise; provided that each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the cemetery association and also by the district judge of the county in which the cemetery is situated. [L. '39, Ch. 98, § 8, amending R. C. M. 1935, § 6499. Approved and in effect March 3, 1939.

Section 12 repeals conflicting laws.

6500. Compensation of trustees—maximum—source. The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the cemetery association on the other [other], provided that the total compensation of such trustee or of the entire board of trustees shall in no case exceed the sum of one hundred dollars (\$100.00) per annum. The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the cemetery association until such trust fund shall reach ten thousand dollars (\$10,000.00) and thereafter the same shall be paid out of the income of such fund. [L. '39, Ch. 98, § 9, amending R. C. M. 1935, § 6500. Approved and in effect March 3, 1939.

Section 12 repeals conflicting laws.

6501. Secretary of board. The secretary of the cemetery association shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings. [L. '39, Ch. 98, § 10, amending R. C. M. 1935, § 6501. Approved and in effect March 3, 1939.

Section 12 repeals conflicting laws.

6502. Annual report—who to make—to whom—inspection. The trustee or the board of trustees of such fund shall annually, on the first day of January, make their report of the condition of such trust fund to the trustees of the cemetery association, and also to the district court as hereinbefore provided. Such

reports shall always be kept by the secretary of such association, and by the clerk of the district court, and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund. [L. '39, Ch. 98, § 11, amending R. C. M. 1935, § 6502. Approved and in effect March 3, 1939.

Section 12 repeals conflicting laws.

CHAPTER 45

RAILROAD CORPORATIONS — GENERAL POWERS AND DUTIES

6521. Penalties—exorbitant and discriminatory rates.

1937. This statute requires that a railroad engine sound its whistle before reaching a crossing but not thereafter. Northern Pac. Ry. Co. v. Bacon, 91 Fed. (2d) 173.

1935. This section held void for uncertainty. Jarvella v. Northern Pac. Ry. Co., 101 Mont. 102, 53 P. (2d) 446.

CHAPTER 49

GENERAL REGULATIONS OF BUSINESS OF RAILROADS

Section

6600, 6601. Repealed.

6600, 6601. Repealed. [L. '39, Ch. 128, § 30. Approved and in effect March 9, 1939. See § 1840.30.

6609. Headlights for locomotives.

1935. State act requiring all locomotives to be equipped with rear headlights held to be violative of act of congress (43 Stat. 659, 45 U. S. C. A. Pars. 22-27) and perpetual injunction directed against its enforcement. Northern Pac. Ry. Co. et al. v. Cooney, Governor, et al., 12 Fed. Supp. 73.

CHAPTER 54

FOREIGN CORPORATIONS

Section

6651.

Foreign corporations—requirements to do business in state—charter copy—filing—verified statement—consent to license laws and to suit—service agent—charter amendments—fee—penalty for law violation—when qualified to do business.

6651. Foreign corporations—requirements to do business in state—charter copy—filing—verified statement—consent to license laws and to suit—service agent—charter amendments—fee—penalty for law violation—when qualified to do business. All foreign corporations or joint stock companies, except foreign insur-

ance companies and corporations otherwise provided for, organized under the laws of any state, or of the United States, or of any foreign government, shall before doing business within this state, file in the office of the secretary of state of Montana, a duly certified copy of their charter, or articles of incorporation, and also a statement, verified by oath of the president and secretary of such corporation, and attested by a majority of its board of directors, showing:

1. The name of such corporation and the location of its principal office or place of business without this state, and the location of the place of business or principal office within this state;

2. The names and residences of the officers, trustees, or directors;

3. The amount of capital stock;

4. The amount of capital invested in the state of Montana.

A copy of such charter or articles of incorporation, and such statement, duly certified by said secretary of state, shall be filed in the office of the county clerk of the county wherein its principal office or place of business in this state will be located. Such corporation or joint stock company shall also file, at the same time, and in the same office, a certificate, under the seal of the corporation, and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the said corporation has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state, and that service process may be made upon some person, a citizen of this state, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the corporation or company.

In case of alteration or amendment of the charter or articles of incorporation of any foreign corporation doing business in this state, or of increasing its capital stock, or of continuing its corporate existence, it must, within thirty (30) days after the same is adopted by the corporation, file a duly certified copy of such amendment or alteration or certificate of increase of capital stock, or of continuance of corporate existence in the office of the secretary of state, and a copy thereof certified by said secretary of state in the office of the county clerk of the county where its principal office or place of business within this state is located; and whenever any such corporation increases its capital stock or continues

its corporate existence, it shall pay to the secretary of state at the time of filing in his office the duly certified copy of the certificate thereof, the same fee that is required by law for filing certificates of increase of capital stock or certificates of continuance of corporate existence. Any such corporation failing, neglecting, or refusing to file such duly certified copies of all alterations, or amendments, of its charter or articles of incorporation, and of all certificates of increase of capital stock or continuance of corporate existence, or refusing to comply with any and all the laws of Montana relating to the payment of fees or licenses, shall forfeit its right to do business in this state and shall be subject to all the penalties, liabilities, and restrictions imposed by law upon foreign corporations for doing business in this state without filing duly certified copies of their charters, or articles of incorporation, in the manner required by law; provided, however, that any foreign corporation now doing business in this state and which has filed a duly certified copy or a duly authenticated copy of its charter or articles of incorporation and also the verified statement and the certificate required by this section and has paid to the secretary of state all fees that are required by law, and any corporation which has altered or amended its charter or articles of incorporation or increased its capital stock, or continued its corporate existence since first filing a duly authenticated or a duly certified copy of its charter or articles of incorporation with the secretary of state, and which has heretofore filed a duly authenticated or a duly certified copy of such alterations, amendments, or certificates of increase or continuance, in the office of the secretary of state and in the office of the county clerk of the county where it has its principal office or place of business in this state and has paid to the secretary of state all fees that are required by law, shall be deemed to have fully complied with the requirements of this act and any defects in such filing shall be deemed to be corrected hereby, and such corporation is duly and validly qualified as a foreign corporation and is authorized to engage in business in the state of Montana, and such corporation is exempt from any penalties to which it may have been subject under the provisions of this act prior to this amendment. [L. '37, Ch. 31, § 1, amending R. C. M. 1935, § 6651. Approved and in effect February 18, 1937.]

Section 2 repeals conflicting laws.

6659/ Liabilities, restrictions, and powers.

1935. ✓ Plaintiff secured a judgment in Iowa against defendant, a New York corporation. Subsequent to this judgment but also subsequent to the dissolution

of the corporation in New York, plaintiff instituted a suit in Montana attaching personal property therein of the defendant foreign corporation. It was held that a local creditor may protect himself by attachment before the foreign liquidator has taken possession of the property. The procedure on the part of the liquidator is to apply for the appointment of an ancillary receiver in the foreign jurisdiction in order to bring the property under his control. *Van Schaick v. Parsons*, 11 Fed. Supp. 654.

CHAPTER 55

DEFINITION AND NATURE OF PROPERTY

6667. Real property.

1938. In an action for claim and delivery and to quiet title to a dredge used in placer gold mining operations by a lessee of the land it was held that the dredge was mining machinery used in working or developing a mine. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. Whether what would otherwise be personal property has become a fixture by reason of its attachment to the soil is primarily a question of intention of the person attaching it. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. The attachment of personal property to the real estate in the manner indicated in the statutes raises a disputable presumption that the one who attached the property to the real estate intended it to become a part of the realty. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. As a general rule, the manner in which the attachment is made, the adaptability of the thing attached to the use to which the realty is applied, and the intention of the one making the attachment determine whether the thing attached is realty or personalty, but this presumption is overcome where the personal property is affixed under an express agreement between the parties that it may be removed. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. Whether the lessee of placer mining ground was entitled to remove his dredge, which was not physically attached to the realty, on termination of the lease depended on the intention of the parties as determined by the lease and contract, and this intention was a question for the jury in an action to quiet title and in claim and delivery. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

6669. Fixtures.

1938. Whether what would otherwise be personal property has become a fixture by reason of its attachment to the soil is primarily a question of intention of the person attaching it. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. The attachment of personal property to the real estate in the manner indicated in the statutes raises a disputable presumption that the one who attached the property to the real estate intended it to become a part of the realty. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. As a general rule, the manner in which the attachment is made, the adaptability of the thing attached to the use to which the realty is applied, and the intention of the one making the attachment determine whether the thing attached is realty or personalty, but this presumption is overcome where

the personal property is affixed under an express agreement between the parties that it may be removed. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. Whether the lessee of placer mining ground was entitled to remove his dredge, which was not physically attached to the realty, on termination of the lease depended on the intention of the parties as determined by the lease and contract, and this intention was a question for the jury in an action to quiet title and in claim and delivery. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

6670. Fixtures attached to mines.

1938. The attachment of personal property to the real estate in the manner indicated in the statutes raises a disputable presumption that the one who attached the property to the real estate intended it to become a part of the realty. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. Whether the lessee of placer mining ground was entitled to remove his dredge, which was not physically attached to the realty, on termination of the lease depended on the intention of the parties as determined by the lease and contract, and this intention was a question for the jury in an action to quiet title and in claim and delivery. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. In an action for claim and delivery and to quiet title to a dredge used in placer gold mining operations by a lessee of the land it was held that the dredge was mining machinery used in working or developing a mine. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. Section 6670, being a special provision relating on to personal property placed upon and used in the operation and development of mining ground, prevails over section 6825 relating to landlord and tenant in general, as regards the right to remove personalty affixed to realty, but this does not preclude the consideration of the relation of landlord and tenant between the lessee and lessor of mining ground in regard to the right of the lessee of mining ground to remove a dredge used in placer mining operations on the termination of the lease, the lessee's dredge not being physically attached to the leased land. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. As a general rule, the manner in which the attachment is made, the adaptability of the thing attached to the use to which the realty is applied, and the intention of the one making the attachment determine whether the thing attached is realty or personalty, but this presumption is overcome where the personal property is affixed under an express agreement between the parties that it may be removed. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. Whether what would otherwise be personal property has become a fixture by reason of its attachment to the soil is primarily a question of intention of the person attaching it. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. Where a dredge was placed on placer mining land and used for working and developing the mine, the disputable presumption arises that the dredge became a part of the real property. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

6671/ Appurtenances.

1939. ✓ A construction company obtained a judgment against a reservoir company for construction work done. The reservoir company brought suit under the declaratory judgment act to have the judgment declared to be not a lien and further to enjoin the construction company from claiming a lien under the Montana statutes. Held, that the reservoir company was not exempt from execution and that the judgment against it should stand. *Ackroyd et al. v. Brady Irr. Co. et al.*, 27 Fed. Supp. 503.

1938. ✓ The contractual right of a stockholder in a reservoir company to receive his pro rata share of water for irrigation purposes on certain lands is appurtenant to such lands, *Brady Irrigation Co. v. Teton County*, 107 Mont. 330, 85 P. (2d) 350, holding such rights not taxable independently of the land to which they are appurtenant.

CHAPTER 56**OWNERSHIP OF PROPERTY AND INTERESTS THEREIN****6674. Property of state.**

Note. For state property in abandoned beds of navigable waters and islands therein, and powers of state board of land commissioners thereover, see § 1805.122 et seq.

6687. Perpetual interest, duration of.

1937. Under section 7884 a voluntary trust of property is created where the description of the property is contained in the conveyance of the property in trust although not contained in the declaration of trust, *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811, holding that sections 7884, 6787, 6784 and 6783, must be construed together.

CHAPTER 57**CONDITIONS AND LIMITATIONS OF OWNERSHIP****Section**

6711. Accumulations of income.

6713. Application of income to support, etc.

6705/ How long it may be suspended.

1937. ✓ Where, by the terms of the declaration of a common-law trust the trustees had the absolute power of alienation of all the property of the trust in their discretion, the statutes prohibiting the suspension of the power of alienation for a prescribed period were not violated. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811, stating that the rule against perpetuities is to be distinguished from statutes prohibiting the suspension of the power of alienation for a prescribed period.

6706. Future interest suspending power of alienation void.

1937. ✓ Where, by the terms of the declaration of a common-law trust the trustees had the absolute power of alienation of all the property of the trust in their discretion, the statutes prohibiting the suspension of the power of alienation for a pre-

scribed period were not violated. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811, stating that the rule against perpetuities is to be distinguished from statutes prohibiting the suspension of the power of alienation for a prescribed period.

6711. Accumulations of income. An accumulation of the income of property may be directed by any will, trust or transfer in writing sufficient to pass the property or create the trust out of which the fund is to arise, for the benefit of one or more persons, objects or purposes, to commence within the time permitted for the vesting of future interests and not to extend beyond the period limiting the time within which the absolute power of alienation of property may be suspended as prescribed by law. [L. '39, Ch. 212, § 1, amending R. C. M. 1935, § 6711. Approved March 17, 1939.

Section 3 repeals conflicting laws.

6713. Application of income to support, etc. When one or more persons for whose benefit an accumulation of income has been directed is or are destitute of other sufficient means of support or education, the proper court, upon application, may direct a suitable sum to be applied thereto out of the fund directed to be accumulated for the benefit of such person or persons. [L. '39, Ch. 212, § 2, amending R. C. M. 1935, § 6713. Approved March 17, 1939.

CHAPTER 58**REAL PROPERTY AND ESTATES THEREIN****6723. Enumeration of estates.**

1936. ✓ A contract employing a broker or agent to induce others to enter into an option or lease, or a lease and option held not to be required to be in writing, since the holder of an option acquires nothing but a personal privilege to purchase, which does not ripen into an interest in the land until he chooses to exercise the privilege, and a lease is not "an interest in real estate." *O'Neill v. Wall*, 103 Mont. 388, 62 P. (2d) 672, holding oral agreement to that effect did not preclude broker from recovering commission.

6727/ Freehold estates — chattels real — chattel interests.

1936. ✓ A contract employing a broker or agent to induce others to enter into an option or lease, or a lease and option held not to be required to be in writing, since the holder of an option acquires nothing but a personal privilege to purchase, which does not ripen into an interest in the land until he chooses to exercise the privilege, and a lease is not "an interest in real estate." *O'Neill v. Wall*, 103 Mont. 388, 62 P. (2d) 672, holding oral agreement to that effect did not preclude broker from recovering commission.

6732. Suspended ownership.

1937.✓ Where, by the terms of the declaration of a common-law trust the trustees had the absolute power of alienation of all the property of the trust in their discretion, the statutes prohibiting the suspension of the power of alienation for a prescribed period were not violated. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811, stating that the rule against perpetuities is to be distinguished from statutes prohibiting the suspension of the power of alienation for a prescribed period.

6733. Suspension by trust.

1937.✓ Where, by the terms of the declaration of a common-law trust the trustees had the absolute power of alienation of all the property of the trust in their discretion, the statutes prohibiting the suspension of the power of alienation for a prescribed period were not violated. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811, stating that the rule against perpetuities is to be distinguished from statutes prohibiting the suspension of the power of alienation for a prescribed period.

CHAPTER 59**SERVITUDES****6749. Servitudes attached to land.**

1939.✓ A construction company obtained a judgment against a reservoir company for construction work done. The reservoir company brought suit under the declaratory judgment act to have the judgment declared to be not a lien and further to enjoin the construction company from claiming a lien under the Montana statutes. Held, that the reservoir company was not exempt from execution and that the judgment against it should stand. *Ackroyd et al. v. Brady Irr. Co. et al.*, 27 Fed. Supp. 503.

1937.✓ A covenant in a deed providing that if the grantee or his assigns should use the premises for the sale of liquor the land should revert, created a negative easement appurtenant to the remaining land owned by the grantor, the land granted being the servient tenement and the lands retained being the dominant tenement. *Northwestern Improvement Co. v. Lowry*, 104 Mont. 289, 66 P. (2d) 792.

6751. Designation of estates.

1937.✓ Cited in *Northwestern Improvement Co. v. Lowry*, 104 Mont. 289, 66 P. (2d) 792.

CHAPTER 62**USES AND TRUSTS IN RELATION TO REAL PROPERTY****6783. What uses and trusts may exist.**

1937.✓ Under section 7884 a voluntary trust of property is created where the description of the property is contained in the conveyance of the property in trust although not contained in the declaration of trust. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811, holding that sections 7884, 6787, 6784 and 6783, must be construed together.

6784. Creation of trusts.

1937.✓ Under section 7884 a voluntary trust of property is created where the description of the property is contained in the conveyance of the property in trust although not contained in the declaration of trust. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811, holding that sections 7884, 6787, 6784 and 6783, must be construed together.

1937.✓ Where there was no evidence of actual or constructive fraud, a deed of land by a corporation to its president did not create a constructive trust in favor of the corporation, despite an alleged parol agreement between the parties to that effect, unless the corporation was powerless, in the circumstances, to make a gift to the grantee. *McLaughlin v. Corcoran*, 104 Mont. 590, 69 P. (2d) 597.

1937.✓ Where realty was paid for by partnership consisting of father, son, daughter, and wife but deed was made to daughter's husband, parol agreement that property was to be held in trust by grantee was admissible to support presumption that where consideration is paid by one and another takes title the transaction creates a resulting trust, despite the statute of frauds. *McLaughlin v. Corcoran*, 104 Mont. 590, 69 P. (2d) 597.

6785. Transfer to one for money paid by another—trust presumed.

1938.✓ Where money used in the purchase of a building for a high school constituted funds which had been allocated to it, but the deed was taken in the name of the county commissioners, mandamus was the proper remedy to compel the latter to turn over to the school district the proceeds of the subsequent sale of the building, on the theory of a resulting trust, there being no request for the declaration of a resulting trust. *State ex rel. Gallatin County High School v. Brandenburg*, 107 Mont. 199, 82 P. (2d) 593.

1937.✓ Where realty was paid for by partnership consisting of father, son, daughter, and wife but deed was made to daughter's husband, parol agreement that property was to be held in trust by grantee was admissible to support presumption that where consideration is paid by one and another takes title the transaction creates a resulting trust, despite the statute of frauds. *McLaughlin v. Corcoran*, 104 Mont. 590, 69 P. (2d) 597.

1937.✓ This section does not apply in a case where the relationship between the person advancing the money and the person taking the legal title is that of husband and wife; the presumption, rebuttable in character, is that the conveyance is made as a gift. *Bingham v. National Bank of Montana*, 105 Mont. 159, 72 P. (2d) 90, applied where the wife advanced most of the purchase price and title was taken by her husband.

1937.✓ If the consideration is paid by one who stands in close relation to the one in whose name the transfer is made, the presumption arises, rebuttable in character, that the transaction was a gift. *McLaughlin v. Corcoran*, 104 Mont. 590, 69 P. (2d) 597, holding that where consideration was paid by a partnership consisting of father, son, wife, and daughter and deed was made to daughter's husband, the transaction was a gift, though the evidence was conflicting.

CHAPTER 65

PERSONAL PROPERTY—LAW GOVERNING—KINDS OF PERSONAL PROPERTY

6804. Things in action defined.

1937. ✓Cited in State ex rel. Freebourn v. Merchants' Credit Service, 104 Mont. 76, 66 P. (2d) 337.

CHAPTER 65A

PROTECTION OF COPYRIGHTS

Section

- 6815.1. Definitions.
- 6815.2. Musical compositions—performing rights—sale—conditions precedent—descriptive list—filing with secretary of state—affidavit of copyright and right to sell, etc.—contents.
- 6815.3. List—inspection by public—taking copies—publication.
- 6815.4. Musical composition—performance—charge for—basis of determination.
- 6815.5. Performer—suits—authorization to secretary of state to accept service of process—duty of secretary.
- 6815.6. List of compositions—filing fee.
- 6815.7. Suits—pleading compliance with statute.
- 6815.8. Public performance for profit without consent—unlawful.
- 6815.9. Violation of act—misdemeanor.
- 6815.10. Repeals.

6815.1. Definitions. As used in this act, "person" means any individual, resident or non-resident, of this state, and every domestic or foreign or alien partnership, society, association or corporation. The words "performing rights" as used in this act refer to "public performance for profit". [L. '39, Ch. 123, § 1. Approved and in effect March 4, 1939.]

6815.2. Musical compositions—performing rights—sale—conditions precedent—descriptive list—filing with secretary of state—affidavit of copyright and right to sell, etc.—contents. It shall be unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, or contract to dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition which has been copyrighted under the laws of the United States, and which is the subject of an existing copyright, or to collect any compensation on account of any such sale, license or other disposition, unless such person:

(a) Shall first have filed with the secretary of state a list describing each such musical composition and dramatico-musical composition, the performing rights in which said person intends to sell, license or otherwise dispose of in this state, which description shall include the following: The name and title of the

copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto in the United States copyright office, the name of the author, the name of the publisher, the name of the present owner of the copyright to said composition, and the name of the present owner of the performing rights thereto. Additional lists of such copyrighted compositions may be filed by any such person from time to time, and shall be subject to all the provisions of this act.

(b) Shall simultaneously file an affidavit that the compositions so listed are copyrighted under the laws of the United States, that the facts contained in the list to which said affidavit relates are true, that affiant has full authority to sell, license or otherwise dispose of the performing rights in such compositions; and the affidavit shall set forth the name, age, occupation and residence of the affiant; and if an agent, the name, occupation and residence of his principal. [L. '39, Ch. 123, § 2. Approved and in effect March 4, 1939.]

6815.3. List—inspection by public—taking copies—publication. The list provided for in section 2 [6815.2] shall be made available by the secretary of state to all persons for examination, and taking of copies, in order that any user of such compositions in this state may be fully advised concerning the performing rights therein, and avoid being over-reached by false claims of ownership of said performing rights, and also avoid committing innocent infringements of said works. The secretary of state may, if in his discretion he deems it necessary, in order to prevent such over-reaching and to protect the citizens of this state from committing innocent violations of the copyright laws of the United States, cause all such copyrighted material filed with him to be published once a year or oftener in a form and medium which he shall deem suitable for said purpose. [L. '39, Ch. 123, § 3. Approved and in effect March 4, 1939.]

6815.4. Musical composition—performance—charge for—basis of determination. It shall be unlawful for any person selling, licensing the use of, or in any manner whatsoever disposing of, or contracting to dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition, to make any charge, or to contract for or collect, any compensation, as a condition of using said performing rights, based in whole or in part, on any program not containing any such composition; and any such charge or contract for compensation shall be valid and enforceable only to the extent that it is based and computed upon a program in

which such composition is rendered. [L. '39, Ch. 123, § 4. Approved and in effect March 4, 1939.

6815.5. Performer — suits — authorization to secretary of state to accept service of process—duty of secretary. At the time of filing the information required in section 2 [6815.2], the owner of said performing rights shall likewise execute and deliver to the secretary of state, on a form to be furnished by the secretary of state, an authorization empowering the secretary of state to accept service of process on such person in any action or proceeding, whether cognizable at law or in equity, arising under this act, and designating the address of such person until the same shall be changed by a new form similarly filed; and service of process may thereafter be effected in this state on such person in any such action or proceeding by serving the secretary of state with duplicate copies of such process; and immediately upon receipt thereof the secretary of state shall mail one of the duplicate copies by registered mail to the address of such person as stated on the authorization last filed by him. [L. '39, Ch. 123, § 5. Approved and in effect March 4, 1939.

6815.6. List of compositions — filing fee. Any person filing with the secretary of state such list shall at the time of filing the same, pay a filing fee in the amount of two cents for each composition described in said list. [L. '39, Ch. 123, § 6. Approved and in effect March 4, 1939.

6815.7. Suits — pleading compliance with statute. No person shall be entitled to commence or maintain any action or proceeding in any court with respect to such performing rights, or to collect any compensation on account of any sale, license or other disposition of such performing rights, in this state, except upon pleading and proving compliance with the provisions of this act. [L. '39, Ch. 123, § 7. Approved and in effect March 4, 1939.

1938. Action brought by authors, song writers, publishers and owners of copyrights to enjoin the enforcement of the statute forbidding the pooling of interests in copyrighted materials. Case dismissed for failure to present proof of value of copyrights, and for failure to submit lists of copyrights as provided by statute, also the jurisdictional amount of \$3000 was not proven. *Carl Fischer, Inc. v. Shannon*, 26 Fed. Supp. 727.

6815.8. Public performance for profit without consent—unlawful. It shall be unlawful for any person, without the consent of the owner thereof, if said owner shall have complied with the provisions of this act, publicly to perform for profit, in this state, any such composition, or for any person knowingly to participate in the public performance for profit

of such composition, or any part thereof. [L. '39, Ch. 123, § 8. Approved and in effect March 4, 1939.

6815.9. Violation of act — misdemeanor. Any violation of this act shall constitute a misdemeanor, to be punished as provided elsewhere in the laws of this state. [L. '39, Ch. 123, § 9. Approved and in effect March 4, 1939.

6815.10. Repeals. All acts and parts of acts in conflict herewith are hereby repealed, especially repealing chapter 90 of the session laws of 1937. [L. '39, Ch. 123, § 11. Approved and in effect March 4, 1939.

Section 10 is partial invalidity saving clause.

CHAPTER 67

ACQUISITION OF REAL PROPERTY BY ACCESSION—FIXTURES—BANKS OF STREAMS—ISLANDS

6820. Alluvion.

1937. ✓ Accreted lands—that is additions to the area of real estate from the gradual deposit by water of solid material, whether mud, sand, or sediment, producing dry land which before was covered by water, along the banks of a navigable or unnavigable stream—belong to the riparian owner. *Smith v. Whitney*, 105 Mont. 523, 74 P. (2d) 450.

6825. Fixtures—renewal of by tenant.

1938. ✓ Section 6670, being a special provision relating on to personal property placed upon and used in the operation and development of mining ground, prevails over section 6825 relating to landlord and tenant in general, and regards the right to remove personalty affixed to realty, but this does not preclude the consideration of the relation of the landlord and tenant between the lessee and lessor of mining ground in regard to the right of the lessee of mining ground to remove a dredge used in placer mining operations on the termination of the lease, the lessee's dredge not being physically attached to the land. *Story Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

CHAPTER 69

ACQUISITION OF PROPERTY BY TRANSFER—GRANTS AND THEIR INTERPRETATION

6846. Delivery in escrow.

1937. ✓ Subject to certain exceptions, an instrument delivered into escrow, to be delivered on the performance of certain conditions, does not become effective until delivered by the depository. *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586, holding that there was no variance where, in an action to quiet title to a lease, the proof showed that the plaintiff relied on a former lease, as alleged, and not on a later lease still in the hands of an escrow holder.

1937. ✓ Depositing a deed and check with an attorney constituted him an escrow holder irrespective of an expressed intention in the beginning to select a bank to hold the instruments. *Conner v. Helvik*, 105 Mont. 437, 73 P. (2d) 541.

1937. ✓ Evidence, in an action to quiet title under an "unless" gas and oil lease, held to justify a finding for the plaintiff on the ground that the lease relied on by him was valid although a lease relied on by the defendant was known by the plaintiff's assignor to have been delivered in escrow and suit begun by defendant to compel delivery, before execution of the assignor's lease as against the defendant's contention that the lease to the plaintiff's assignor was a mere sham or pretext. *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586.

CHAPTER 70

TRANSFER OF REAL PROPERTY — METHOD AND EFFECT

6859. Requisites for transfer of certain estates.

1937. ✓ The lien of a judgment against an heir of an intestate attached on the death of the intestate so that the heir's deed of his undivided interest in the inherited land was subject to the lien though such interest was not disclosed of record in the office of the county recorder, since it was neither concealed nor undisclosed. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

1937. ✓ Section 9410 is broad enough to include, and does include, an interest in realty, the title to which vests subsequent to the docketing of a judgment and before satisfaction of the judgment lien. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

CHAPTER 71

TRANSFER OF PERSONAL PROPERTY — MODES OF TRANSFER GIFTS

6881. When buyer acquires better title than seller has.

1937. ✓ Cited in *Rasmussen v. O. E. Lee & Co., Inc.*, 104 Mont. 278, 66 P. (2d) 119.

CHAPTER 72

RECORDING TRANSFERS — RELEASE OF OIL, GAS, AND MINERAL LEASES

Section

6893. Acknowledgment of instruments required—except when—corporation instruments—recording.

6893. Acknowledgment of instruments required—except when—corporation instruments—recording. Before an instrument can be recorded, unless it belongs to the class provided for in either sections 6891, 6892, 6927, or 6928, its execution must be acknowledged by the person executing it, or, if executed by a

corporation, by its president, vice-president, secretary, or assistant secretary, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, or proved by a subscribing witness, or as provided in sections 6923 and 6924, and the acknowledgment or proof certified in the manner prescribed in sections 6905 to 6933 of this code. [L. '37, Ch. 170, § 1, amending R. C. M. 1935, § 6893. Approved and in effect March 18, 1937.]

Section 2 repeals conflicting laws.

6902. Oil, gas, and mineral leases, release of record of.

1936. ✓ An oil and gas lease which was to continue so long as oil and gas were produced, but there was no market for the gas produced, could be cancelled as to the part of the lease on which no wells had been drilled and continued as to the part on which a producing well had been drilled, but capped for lack of market. *Severson v. Barstow*, 103 Mont. 526, 63 P. (2d) 1022.

1936. ✓ On appeal of an action to cancel an oil and gas lease no attorney fee was allowed to either party where each party received a part of what they sought. *Severson v. Barstow*, 103 Mont. 526, 63 P. (2d) 1022.

1936. ✓ While an action for the cancellation of an oil and gas lease is an action at law, it embodies the principal of equitable relief, and courts should seek to do equity as between the parties. *Severson v. Barstow*, 103 Mont. 526, 63 P. (2d) 1022.

6903. Action to compel release—damages—attorney's fees.

1938. ✓ It is conceded that in actions where an attorney's fee is allowed as a matter of course the court may appraise the value of such services. There is no reason why evidence should be taken in this matter as the question of attorney's fees is discretionary with the court. *Stanolind Oil & Gas Co. v. Guertzen*, 100 Fed. (2d) 299.

CHAPTER 73

ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

Section

6910. Officer taking acknowledgment must know person—corporations.

6915. Acknowledgment by corporation—form.

6908. By whom taken without the United States.

1935. ✓ Power of attorney executed by a resident of Spain authorizing Spanish consul general in San Francisco to represent him in heirship proceedings in Montana held sufficient under statute, and exclusion of proof of facts and customs in Spain tending to throw doubts on authority of counsel appointed by consul general held not reversible error. In re *Astibia's Estate*, 100 Mont. 224, 46 P. (2d) 712.

6910. Officer taking acknowledgment must know person—corporations. The acknowledgment of an instrument must not be taken

unless the officer taking it knows or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president, or vice-president, or secretary, or assistant secretary of such corporation, or other person duly authorized by resolution of such corporation, who executed it on its behalf. [L. '37, Ch. 171, § 1, amending R. C. M. 1935, § 6910. Approved and in effect March 18, 1937.]

Section 2 repeals conflicting laws.

6915. Acknowledgment by corporation—form. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

STATE OF..... }
County of..... } ss.

On this..... day of....., in the year....., before me (here insert the name and quality of the officer), personally appeared....., known to me (or proved to me on the oath of.....) to be the president (or vice-president) or the secretary (or the assistant secretary) of the corporation that executed the within instrument (where, however, the instrument is executed in behalf of the corporation by some one other than the president, or vice-president, or secretary, or assistant secretary), insert: known to me (or proved to me on the oath of.....) to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same. [L. '37, Ch. 169, § 1, amending R. C. M. 1935, § 6915. Approved and in effect March 18, 1937.]

Section 2 repeals conflicting laws.

CHAPTER 74

EFFECT OF RECORDING OR FAILURE TO RECORD INSTRUMENTS

6934. Record—to whom notice—recording copies.

1937. ✓ The second mortgagee is chargeable with notice of a prior, duly recorded first mortgage despite fraudulent representation by the mortgagor to the second mortgagee that there is no mortgage ahead of his mortgage, and the latter cannot take precedence of the first mortgage. *Bailey v. Hansen*, 105 Mont. 552, 74 P. (2d) 438.

1937. ✓ Where a mortgagor represented fraudulently to the plaintiff mortgagee that there was no mortgage ahead of his mortgage, though there was such

a mortgage recorded, the plaintiff was entitled to prove the valuelessness of his mortgage and to attach the property of the mortgagor because of such valuelessness without first foreclosing, though seven years had elapsed before he brought the action wherein the affidavit for attachment was filed. *Bailey v. Hansen*, 105 Mont. 552, 74 P. (2d) 438.

6935. Conveyances to be recorded, or are void, etc.

1938. ✓ Oil and gas leases not recorded until after the recording of royalty assignments were taken subject to the rights under the assignments no matter when the lessee acquired actual knowledge of the assignments. *Aronow v. Bishop*, 107 Mont. 317, 86 P. (2d) 644.

1938. ✓ Cited in *Henderson v. City of Missoula*, 106 Mont. 596, 79 P. (2d) 547.

CHAPTER 76

HOMESTEADS

Section

6968. Selection of homestead—quantity of land—land within town or city—value.

6949. When subject to execution or forced sale.

Subdivision 4.

1939. ✓ The statute contemplates a live mortgage at the time of execution or forced sale, and not on the lien of which has been barred by a special statute of limitations prior to the declaration of homestead before final judgment. *Siuru v. Sell et al.*, Mont., 91 P. (2d) 406. 7/1

6968. Selection of homestead—quantity of land—land within town or city—value. Homesteads may be selected and claimed:

1. Consisting of any quantity of land not exceeding three hundred and twenty (320) acres used for agricultural purposes, and the dwelling-house thereon and its appurtenances, and not included in any town plot, city or village; or

2. A quantity of land not exceeding in amount one-fourth ($\frac{1}{4}$) of an acre, being within a town plot, city or village, and the dwelling-house thereon and its appurtenances. Such homestead, in either case, shall not exceed in value the assessed value thereof, as appears on the assessment roll of the preceding year of the county in which the homestead selected and claimed is situate, in the sum of two thousand five hundred dollars (\$2500.00). Such assessed value shall be the basis of and conclusive in any proceedings instituted affecting or relating to the value of such homestead. [L. '37, Ch. 166, § 1, amending R. C. M. 1935, § 6968. Approved and in effect March 18, 1937.]

Section 2 repeals conflicting laws.

6969. "Head of family" defined.

1938. ✓ An exemption affidavit of a debtor was held sufficient which stated that his "personal earnings are necessary for the support of himself and his said family," where it also stated that he was the head of a family, though it did not state that his family was "supported in whole or in part by his labor." *Williams v. Sorenson*, 106 Mont. 122, 75 P. (2d) 784.

CHAPTER 77

WILLS—EXECUTION AND REVOCATION

6974. Who may make a will.

1937. ✓ All that is required by this section is that a person have testamentary capacity at the time of the execution of a will; it is a question, not whether a testator is sane or insane, but rather whether or not he is mentally competent. In *re Cissel's Estate*, 104 Mont. 306, 66 P. (2d) 779.

6977. Who may take by will.

1938. ✓ A bequest to the estate of a deceased person held invalid where the court was unable to ascertain who the testatrix intended to receive it. In *re Doyle's Estate*, 107 Mont. 64, 80 P. (2d) 374.

6980. Written will, how to be executed.

Note. For a review of the English decisions on the requisites of valid execution of a will see In *re Bragg's Estate*, Mont., 76 P. (2d) 57.

1939. ✓ A will signed by an old and feeble man, alert mentally but weak physically, was properly executed where he wrote the first three letters and his hand was guided by another in writing the remainder of his signature. In *re Sales' Estate*, Mont., 89 P. (2d) 1043.

1938. ✓ The acknowledgment of subscription by the testator of a will may be made established by proof of words, gestures, or conduct which give the witnesses to understand that the signature is that of the testator, and such acknowledgment need not be made verbally. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

1938. ✓ A substantial rather than a literal compliance with statutory formalities in the execution of a will is all that is required. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

1938. ✓ The purpose of section 6980 is to guard against and prevent mistake, imposition, undue influence, fraud or deception, in the making of wills, to afford means of determining their authenticity, and to prevent the substitution of some other writing in place thereof. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

1938. ✓ The acknowledgment of a will may be established by circumstantial evidence equally as well as by spoken words. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

1938. ✓ The proof as to whether the testator has substantially complied with the rules prescribed in section 6980 in making his will must be made in accordance with the rules of evidence. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

1938. ✓ While two attesting witnesses are indispensable to the making of a valid will, yet the satisfactory testimony of one witness entitles a will to probate. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

1938. ✓ It is not necessary that a testator expressly request one to witness his will, nor expressly declare the instrument to be his will, so long as he informs the witnesses at the time of the attestation in some manner that the instrument is his will and he desires that they witness it. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

1938. ✓ All of the four requisites of the statute to the validity of a will are to be regarded as essential, and the omission of any one of them is fatal to the validity of the will. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

1938. ✓ That the attesting witness did not see the signature of the testator on the will did not destroy the status of the witness as an attesting witness, under the rule that acknowledgment of a will by the testator is equivalent to acknowledgment of the signature to it, nor does the failure to see the signature of the testator destroy in toto the status of such witness under the rule that the attestation is to the signature only, not to the will as a whole. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

1938. ✓ Where the first attesting witness signed the will at the request of the testator in the presence of the second witness who then signed at the request of the first witness, on the suggestion of the testator that he so request the second witness, who signed in the presence of the testator and the first witness, the statute was complied with. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

1938. ✓ A testator's acknowledgment of a will necessarily acknowledges the testator's signature thereon, but an acknowledgment other than by spoken words must be made in some unmistakable manner. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

1938. ✓ In view of section 4, requiring liberal construction of statutes in civil actions, it was held that the acknowledgment of a testator to a will may be made in any manner that conveys to the mind of a subscribing witness of reasonable intelligence the testator's intention to acknowledge its execution. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

CHAPTER 78

WILLS—INTERPRETATION

7016. Testor's intention to be carried out.

1938. ✓ A bequest to the estate of deceased person held invalid where the court was unable to ascertain who the testatrix intended to receive it. In *re Doyle's Estate*, 107 Mont. 64, 80 P. (2d) 374.

1938. ✓ This section must be given full application in any construction of a will. In *re Yergy's Estate*, 106 Mont. 505, 79 P. (2d) 555.

7017. Intention to be ascertained from will.

1938. ✓ This section must be given full application in any construction of a will. In *re Yergy's Estate*, 106 Mont. 505, 79 P. (2d) 555.

7018. Rules of interpretation.

1938. ✓ This section must be given full application in any construction of a will. In *re Yergy's Estate*, 106 Mont. 505, 79 P. (2d) 555.

7020. Harmonizing various parts.

1938. ✓ This section must be given full application in any construction of a will. In *re Yergy's Estate*, 106 Mont. 505, 79 P. (2d) 555.

7022. When ambiguous or doubtful.

1938. ✓ This section must be given full application in any construction of a will. In re Yergy's Estate, 106 Mont. 505, 79 P. (2d) 555.

7023. Words taken in ordinary sense.

1938. This section must be given full application in any construction of a will. In re Yergy's Estate, 106 Mont. 505, 79 P. (2d) 555.

7024. Words to receive an operative construction.

1938. This section must be given full application in any construction of a will. In re Yergy's Estate, 106 Mont. 505, 79 P. (2d) 555.

7039. Mistakes and omissions.

1938. ✓ A bequest to the estate of deceased person held invalid where the court was unable to ascertain who the testatrix intended to receive it. In re Doyle's Estate, 107 Mont. 64, 80 P. (2d) 374.

7040. When devises and bequests vest.

1937. ✓ Both by statute and decision of the supreme court of Montana it is the rule that upon death all of the property of the deceased, whether real or personal, vests immediately in those who are entitled by will or under the law to succeed to it, and the right of the state to an inheritance tax likewise vests at the same moment, though neither those entitled to succeed, nor the state may then know the extent or value of their respective rights. In re Clark's Estate, 105 Mont. 401, 74 P. (2d) 401.

1937. ✓ The legislature may not retroactively tax estates. In re Clark's Estate, 105 Mont. 401, 74 P. (2d) 401.

CHAPTER 79**WILLS—GENERAL PROVISIONS****7053. Order of resort to estate for debts.**

1937. ✓ A claim against the estate of a deceased person need not be presented before resorting to an equitable suit to enforce performance of the deceased's contract to make a will by fastening a trust upon the property agreed to be willed, and entitled to succeed, nor the state may then know v. Mark, 105 Mont. 361, 73 P. (2d) 537, holding that the rule applied where the deceased had agreed to will a specific sum of money, as against contention there was an adequate remedy at law for damages.

7070. Liability of beneficiaries for testator's obligations.

1937. ✓ The legislature may not retroactively tax estates. In re Clark's Estate, 105 Mont. 401, 74 P. (2d) 401.

CHAPTER 80**SUCCESSION****Section**

7090.1. Nonresident aliens—"person" defined.

7090.2. Same—right of inheritance.

7090.3. Same—executor or administrator—duties—disposition of money which would have gone to person had he not been a non-resident alien—county as recipient—sale of property.

Section

7090.4. Same—disposition of money—county general fund.

7090.5. Same—effective date of act—application of act.

7072. Intestate estate—to whom passes.

1937. ✓ The decree of distribution of an estate is not the source of, but in a sense quiets, the title of the heirs to the property, although the actual title was previously vested in them, subject only to the lien of the debts of the deceased, expenses of the administration of his estate, family allowances, etc., and the distribution and settlement of the estate satisfies the lien of these charges. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

1937. ✓ Cited in *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454, holding that such a transfer by operation of law is, by statute, given the same force and effect as a transfer in writing.

1937. ✓ The lien of a judgment against an heir of an intestate attached on the death of the intestate so that the heir's deed of his undivided interest in the inherited land was subject to the lien though such interest was not disclosed of record in the office of the county recorder, since it was neither concealed nor undisclosed. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

1937. ✓ Both by statute and decision of the supreme court of Montana it is the rule that upon death all of the property of the deceased, whether real or personal, vests immediately in those who are entitled by will or under the law to succeed to it, and the right of the state to an inheritance tax likewise vests at the same moment, though neither those declaring claimant's right thereto as legatee. *Erwin* the extent or value of their respective rights. In re Clark's Estate, 105 Mont. 401, 74 P. (2d) 401.

7073. Succession to and distribution of property.

1938. ✓ Cited in *In re Olson's Estate*, 194 Wash. 219, 77 P. (2d) 781, revoking letters of administration issued to the non-resident widow of a deceased Montana resident and ordering distribution of the estate according to the second paragraph of this section.

7090.1. Nonresident aliens—"person" defined. "Person" as used in this act shall mean a corporation, association, copartnership, or any other legal entity, as well as a natural person, and the singular thereof shall include the plural. [L. '39, Ch. 104, § 1. Approved and in effect March 3, 1939.]

7090.2. Same—right of inheritance. No person shall receive money or property save and except mining property, as provided in section twenty-five, article III, of the constitution of the state of Montana, as an heir, devisee and/or legatee of a deceased person leaving an estate or portion thereof in the state of Montana, if such heir, devisee and/or legatee, at the time of the death of said deceased person, is not a citizen of the United States and is a resident of a foreign country at the time of the death of said intestate or testator, unless, reciprocally, the foreign country in question would permit the transfer to an heir, devisee

and/or legatee residing in the United States, of property left by a deceased person in said foreign country. [L. '39, Ch. 104, § 2. Approved and in effect March 3, 1939.]

7090.3. Same—executor or administrator—duties—disposition of money which would have gone to person had he not been a nonresident alien—county as recipient—sale of property. In any estate where money or property would have vested in any person but for the provisions of section one (1) [7090.1] of this act, it shall be the duty of the executor or administrator thereof to set forth the name and residence of such person in his petition for letters and to do likewise in his petition for distribution, in which, also, he shall designate and describe the amount of money and/or property which, but for the provisions of this act, would have passed to said heir, legatee or devisee. Upon the final settlement of said estate upon order of the court it shall be the duty of said executor or administrator to deliver all money and/or property affected by such order of court to the county wherein it is situated, in the case of real property by delivering a certified copy of said order to the clerk and recorder of such county, whose duty it shall be to record the same and, in the case of money and/or other personal property, by delivering the same to the treasurer of said county. All property not theretofore converted into cash shall be sold by the county in the same manner as is property sold for taxes, provided that, in the case of real property the deed of said county shall make reference to the book and page of county records wherein is recorded said order of court transferring said real property to said county. [L. '39, Ch. 104, § 3. Approved and in effect March 3, 1939.]

7090.4. Same — disposition of money — county general fund. All money, including all money realized from the sale or sales of property delivered to the county by an executor or administrator under the provisions of this act, immediately upon its receipt by the county treasurer, shall be placed in the county general fund. [L. '39, Ch. 104, § 4. Approved and in effect March 3, 1939.]

7090.5. Same—effective date of act—application of act. This act shall be in full force and effect from and after its passage and approval and the provisions thereof shall apply to all estates now in the process of probate but not heretofore distributed by order of court. [L. '39, Ch. 104, § 6. Approved and in effect March 3, 1939.]

Section 5 is partial invalidity saving clause.

Section 7 repeals conflicting laws.

CHAPTER 81

WATER RIGHTS—APPROPRIATION

Section

- 7097.1. Diversion of water — returning equal amount to stream from reservoir or purchased.
- 7135.1. Surveys and adjudication of streams — policy of state.
- 7135.2. Same—state engineer to bring actions for adjudication.
- 7135.3. Same — same — referees — appointment.
- 7135.4. Same—same—same—notice of appointment.
- 7135.5. Same—state engineer—duties—examination of streams — scope — surveys, reports, maps, and plats—as evidence.
- 7135.6. Same—referees—hearings.
- 7135.7. Same — same — reports — decreed water rights — recognition.
- 7135.8. Same—procedure in district court.
- 7135.9. Same—same—judgment.

7093. What waters may be appropriated.

1938. ✓ Under Rev. Code 1907, § 4840, waters flowing through the defendant's drainage ditch into a water course, where they would naturally drain, could be appropriated from the latter by a lower proprietor as against a subsequent appropriation by the owner of the ditch. *West Side Ditch Co. v. Bennett*, 106 Mont. 422, 78 P. (2d) 78.

1936. ✓ Bill in equity charging unlawful interference with plaintiff's water rights. Parties plaintiff and defendant or their predecessors in interest appropriated water from creek under R. C. M. 1921, section 7093. Water adjudication was had in state court and a commissioner had been appointed by state court each year as provided for under R. C. M. 1921, section 7136, as amended by Laws of 1925, Ch. 125, Par. 1. Held, that action was in effect one to quiet title to real property under R. C. M. 1921, section 7105, and that the state court had maintained continuing jurisdiction over the controversy. That the federal court was not in control of the res and thus the state court had exclusive jurisdiction as provided in R. C. M. 1921, section 7150 as amended by laws of 1925, Ch. 125, Par. 5. *Sain et al. v. Montana Power Co.*, 84 Fed. (2d) 126.

7094. Appropriation must be for a useful purpose — abandonment.

1938. Prior to the enactment of the first Montana water rights statute in 1885, laws of 1885, p. 130, all appropriations were made pursuant to the rules and customs of the early settlers of California, which had been adopted in Montana territory. The essential elements of an appropriation were a completed ditch and the application of water through it to a beneficial use. *Missoula Light & Power Co. v. Hughes*, 106 Mont. 355, 77 P. (2d) 1041, an injunction action to protect the plaintiff's right to use water appropriated in 1871.

7095. Point of diversion may be changed — change of use.

1938. ✓ Appropriations of water, though not made for the purpose of sale, may be thereafter changed to that purpose if subsequent appropriators are not injured thereby. *Sherlock v. Greaves*, 106 Mont. 206, 76 P. (2d) 87.

1936. ✓ A judgment in a suit concerning water rights was reversed and remanded for further proceedings where the judgment roll in a former suit between

the same parties concerning the same subject matter was not introduced in evidence, or other attempt made to show what issues were litigated therein, so that the court could determine whether the water commissioner was distributing the water in accordance with what was there adjudged. *Brennan v. Jones*, 101 Mont. 550, 55 P. (2d) 697.

1936. ✓ If the full amount of the water adjudged to a user by a decree is not used by it the remainder must be returned to the stream for the use of other users in accordance to their priorities, and not delivered by the water commissioner to some favored user. *Brennan v. Jones*, 101 Mont. 550, 55 P. (2d) 697.

1936. ✓ The rule that the effect of a judgment as res judicate is not lessened when the fact that it is erroneous is established by the decisions of the highest appellate tribunal of the state, rendered in another action, applied to a water rights suit. *Brennan v. Jones*, 101 Mont. 550, 55 P. (2d) 697.

7097.1. Diversion of water—returning equal amount to stream from reservoir or purchased.

Any person, persons, association or corporation, owning or in possession of lands susceptible of irrigation from any stream, the waters of which are so diminished by prior appropriations that a sufficient amount of water for the irrigation of their lands cannot be obtained from the natural flow of the stream, who shall construct a reservoir, or shall purchase or lease water from a reservoir owned by the state water conservation board of the state of Montana, or another, or shall otherwise acquire an interest in such reservoir, or in water stored therein, which is so located that because of natural or other obstacles the water impounded therein cannot be conducted to the lands which they desire to irrigate, may, provided the stored water can be discharged into the stream in such a manner that it can be used beneficially by prior appropriators, divert the natural flow of the stream for the irrigation of their lands in lieu of an equal amount of stored water, provided, however, that such exchange can be made without injury to said prior appropriators. [L. '37, Ch. 39, § 1. Approved and in effect February 20, 1937.]

Section 2 repeals conflicting laws.

7100. Notice of appropriation.

1938. A notice of appropriation of water which, after stating the purpose for which it was to be used and place of intended use, and appropriators, stated that such appropriation was made "on theday of....., 1871," was held prima facie evidence of the date of appropriation, but had no evidential value on the question of the amount of water actually diverted and beneficially used, under the act of 1885, p. 130. *Missoula Light & Power Co. v. Hughes*, 106 Mont. 355, 77 P. (2d) 1041.

1938. ✓ Cited in *Anderson v. Spear-Morgan Livestock Co.*, 107 Mont. 18, 79 P. (2d) 667, holding the notice conformed with section 7100 and was timely filed.

1938. ✓ Where the notice of appropriation of water is in conformity with the statute and is timely filed, and the construction of the ditch is proceeded with

reasonable diligence, though the work is not continuous, on account of unfavorable weather, the right to the water dates from the time of filing the notice and not from the time of the first user of the water. *Anderson v. Spear-Morgan Livestock Co.*, 107 Mont. 18, 79 P. (2d) 667.

1937. A notice of water rights not recorded in the time required by law are of no evidentiary value in proving the amount or date of an appropriation of water. *Galahan v. Lewis*, 105 Mont. 294, 72 P. (2d) 1018.

1935. ✓ A valid appropriation of water may be acquired even where there has been no compliance with the statute regulating appropriations by record, where the water is actually diverted from the stream and applied to a beneficial use; compliance is important only with regard to the doctrine of "relation back," of subsequent appropriations. *Vidal v. Kensler*, 100 Mont. 592, 51 P. (2d) 235.

1935. ✓ The prima facie showing of priority of water appropriations by dates of record notices may be rebutted by other evidence. *Vidal v. Kensler*, 100 Mont. 592, 51 P. (2d) 235, holding that the supreme court should determine on appeal whether the evidence was sufficient to overcome the prima facie case made, that such evidence, in order to overcome prima facie case, must be clear, unambiguous, and convincing, and that the evidence in this case did not meet those requirements.

7101. Diligence in appropriating.

1938. ✓ Where the notice of appropriation of water is in conformity with the statute and is timely filed, and the construction of the ditch is proceeded with reasonable diligence, though the work is not continuous, on account of unfavorable weather, the right to the water dates from the time of filing the notice and not from the time of the first user of the water. *Anderson v. Spear-Morgan Livestock Co.*, 107 Mont. 18, 79 P. (2d) 667.

7102. Effect of failure.

1937. ✓ A notice of water rights not recorded in the time required by law are of no evidentiary value in proving the amount or date of an appropriation of water. *Galahan v. Lewis*, 105 Mont. 294, 72 P. (2d) 1018.

1935. ✓ A valid appropriation of water may be acquired even where there has been no compliance with the statute regulating appropriations by record, where the water is actually diverted from the stream and applied to a beneficial use; compliance is important only with regard to the doctrine of "relation back," of subsequent appropriations. *Vidal v. Kensler*, 100 Mont. 592, 51 P. (2d) 235.

7103. Record of declaration.

1937. ✓ A notice of water rights not recorded in the time required by law are of no evidentiary value in proving the amount or date of an appropriation of water. *Galahan v. Lewis*, 105 Mont. 294, 72 P. (2d) 1018.

7104. Record prima facie evidence.

1938. ✓ Cited in *Anderson v. Spear-Morgan Livestock Co.*, 107 Mont. 18, 79 P. (2d) 667, holding the notice conformed with section 7100 and was timely filed.

1938. ✓ Where the notice of appropriation of water is in conformity with the statute and is timely filed, and the construction of the ditch is proceeded with reasonable diligence, though the work is not continuous, on account of unfavorable weather, the

right to the water dates from the time of filing the notice and not from the time of the first user of the water. *Anderson v. Spear-Morgan Livestock Co.*, 107 Mont. 18, 79 P. (2d) 667.

1937. ✓ A notice of water rights not recorded in the time required by law are of no evidentiary value in proving the amount or date of an appropriation of water. *Galahan v. Lewis*, 105 Mont. 294, 72 P. (2d) 1018.

1935. The prima facie showing of priority of water appropriations by dates of record notices may be rebutted by other evidence. *Vidal v. Kensler*, 100 Mont. 592, 51 P. (2d) 235, holding that the supreme court should determine on appeal whether the evidence was sufficient to overcome the prima facie case made, that such evidence, in order to overcome prima facie case, must be clear, unambiguous, and convincing, and that the evidence in this case did not meet these requirements.

1935. Cited in *Wills v. Morris*, 100 Mont. 514, 50 P. (2d) 862.

7105. Rights settled in one action.

1936. ✓ Bill in equity charging unlawful interference with plaintiff's water rights. Parties plaintiff and defendant or their predecessors in interest appropriated water from creek under R. C. M. 1921, section 7093. Water adjudication was had in state court and a commissioner had been appointed by state court each year as provided for under R. C. M. 1921, section 7136, as amended by Laws of 1925, Ch. 125, Par. 1. Held, that action was in effect one to quiet title to real property under R. C. M. 1921, section 7105, and that the state court had maintained continuing jurisdiction over the controversy. That the federal court was not in control of the res and thus the state court had exclusive jurisdiction as provided in R. C. M. 1921, section 7150 as amended by laws of 1925, Ch. 125, Par. 5. *Sain et al. v. Montana Power Co.*, 84 Fed. (2d) 126.

1935. ✓ In action to determine water rights, evidence held insufficient to show that certain creek was tributary of another, and evidence of appropriation of water by the predecessor of the defendant held insufficient to show water right in defendant. *Wills v. Morris*, 100 Mont. 504, 50 P. (2d) 858.

1935. ✓ Where all of the parties diverting water from a stream are made parties to an action to adjudge water rights, every party becomes an antagonist of every other party, hence if two or more parties are awarded a water right under the decree, each receiving such award recovers a judgment against the other or others, and such judgment is divisible into parts, and an appeal will lie from a part of the judgment. *Wills v. Morris*, 100 Mont. 504, 50 P. (2d) 858.

7110. Right to construct dams and raise water—conducting water over lands and railroad rights-of-way.

1939. ✓ A subsequent appropriator of water must take notice of the conditions existing at the time of his appropriation, and it is not sufficient that he leave in the stream the exact amount of water appropriated by a prior appropriator if it is not available to such appropriator because of his means of appropriation, which were reasonably efficient under prior conditions. *State ex rel. Crowley v. District Court*, Mont., 88 P. (2d) 23, holding that a complaint which stated such facts, and that the construction of new means of using the water would entail great expense, stated a cause of action.

7113. Owners of water to sell surplus.

1938. ✓ Under sections 7113-7116 prior appropriators of water who sold water to a community had the right to enjoin the members thereof from diverting such water or using diverted water in violation of the appropriator's rights, in the absence of a showing of tender of rates established by law. *Sherlock v. Greaves*, 106 Mont. 206, 76 P. (2d) 87.

1938. ✓ In an action to enjoin the diversion of water from a creek it was held that the appropriators in selling a community the water devoted it to a public use. *Sherlock v. Greaves*, 106 Mont. 206, 76 P. (2d) 87.

7115. Enforcement of right to surplus.

1938. ✓ In an action to enjoin the diversion of water from a creek it was held that the appropriators in selling a community the water devoted it to a public use. *Sherlock v. Greaves*, 106 Mont. 206, 76 P. (2d) 87.

7128. Effect of decree upon subsequent appropriations.

1935. ✓ This section only applies to the admissibility of decrees adjudicating the waters of streams in suits involving the rights of appropriators subsequent to the date of the decree, and in such suits, if the decree is entered other than by stipulation, it is prima facie evidence in such cases. *State ex rel. Delmoe v. District Court*, 100 Mont. 131, 46 P. (2d) 39.

7135.1. **Surveys and adjudication of streams—policy of state.** It is hereby declared to be the policy of this state and necessary for the welfare of the state and its citizens, that the waters of this state and especially interstate streams arising out of the state be investigated and adjudicated as soon as possible in order to protect the rights of water users in this state and negotiate interstate compacts in relation thereto, and that the state water conservation board and state engineer make investigations to secure necessary information and initiate and carry on actions therefor. [L. '39, Ch. 185, § 1. Approved and in effect March 17, 1939.]

7135.2. **Same — state engineer to bring actions for adjudication.** At the direction of the state water conservation board the state engineer is hereby authorized to bring action to adjudicate the waters of any stream or of any stream and its tributaries in any county traversed by said stream. [L. '39, Ch. 185, § 2. Approved and in effect March 17, 1939.]

7135.3 **Same — same — referees — appointment.** In said actions the state engineer, upon direction of the state water conservation board, or in any action pending for the adjudication of a water right, any party thereto, may make application to the court for the appointment of some competent person or persons to act as a referee or referees in said cause and to take testimony therein, and the court may appoint a referee or referees who shall proceed as

herein set forth. In said order of reference the court may submit to said referee or referees any or all issues of fact in said cause. [L. '39, Ch. 185, § 3. Approved and in effect March 17, 1939.

7135.4. Same — same — same — notice of appointment. Prior to the appointment of such referee two weeks notice of said application and the name of the referee or referees as selected by said court shall be given or mailed to all parties who shall have appeared in said case. Said referee or referees need not be residents of the county in which said action is pending. Any party may object to the appointment of any person as referee on the same grounds as he may object to him as a trial juror as provided in section 9344 of this code except that no objection shall have [be] entertained because of non-residence of referee in the county of such adjudication. The provisions of sections 9377, 9378, 9379, 9380 and 9382, revised codes, shall govern and apply to referees in the actions herein described. [L. '39, Ch. 185, § 4. Approved and in effect March 17, 1939.

7135.5. Same — state engineer — duties — examination of streams—scope—surveys, reports, maps, and plats—as evidence. The state engineer shall either before or after the bringing of such action upon direction of the state water conservation board or upon the direction of the court do all things, make all surveys, and perform all services required by said board in the securing of all necessary information and making same available to said board or others who may be interested therein including the courts of this state. The state engineer or some qualified assistant may proceed to make an examination of any stream or streams as required by said board and the works diverting therefrom, said examination to include the measurement of the discharge of said stream and of the carrying capacity of the various ditches and canals, an examination of the irrigated lands and an approximate measurement of the lands irrigated from the various ditches and canals, and to take such other steps and gather such other data and information as may be essential to the proper understanding of the relative rights of the parties interested, which said observation and measurement shall be reduced to writing and made a matter of record at his office, and it shall be the duty of the state engineer to make or cause to be made such maps or plats thereof as he shall deem necessary or shall be required by said board, and to file with said board a detailed report and copies of such maps or plats covering such information so acquired by him. Any or all such surveys, reports, maps

and plats may be furnished to the judge of said court or the referee or referees mentioned herein and may be introduced as evidence in such proceedings; provided that the costs and expenses incurred in carrying out the provisions of this section shall be paid by the state water conservation board. [L. '39, Ch. 185, § 5. Approved and in effect March 17, 1939.

7135.6. Same — referees — hearings. Said referee or referees shall hold such hearings in said cause as may be necessary relating to the rights of the respective claimants to water upon any stream or streams, and shall take testimony upon questions submitted to him or them and shall continue such hearing until completed, but the said referee or referees shall have power to adjourn the taking of testimony from time to time and from place to place to further the convenience of those interested. Such testimony shall be taken in accordance with established rules of evidence. [L. '39, Ch. 185, § 6. Approved and in effect March 17, 1939.

7135.7. Same — same — reports — decreed water rights—recognition. The report of the said referee or referees shall contain findings of fact upon the issues submitted but shall not contain conclusion of law. All evidence before said referee shall be transcribed and submitted to the court with the findings of such referees. In proceedings described herein, all vested and decreed water rights shall be herein recognized. [L. '39, Ch. 185, § 7. Approved and in effect March 17, 1939.

7135.8. Same — procedure in district court. After the conclusion of the taking of such testimony the said referee or referees shall file their findings of fact with the clerk of the district court wherein said action is pending which findings of fact shall remain on file and subject to investigation by parties interested therein. The clerk of court shall notify the parties or their attorneys by mail upon the filing of such findings of fact by the referee or referees. The parties shall have thirty days from the mailing of such notices during which time any party to said action may file in said court objections or exceptions to any such findings of fact. As to any findings to which no exceptions are filed, same may be adopted by the court as findings of said court. As to any findings to which objections are filed, the court shall consider such proposed findings together with the evidence in relation thereto and may adopt, reject, or modify such findings. The court may upon request or of its own motion make additional findings in said cause. All conclusions of law shall be determined by the court in the same manner as conclusions of law are determined by the court in any

action to be tried before the court. [L. '39, Ch. 185, § 8. Approved and in effect March 17, 1939.]

7135.9. Same—same—judgment. The court shall thereafter render its judgment and same shall be in full force and of the same effect as if all testimony had been taken directly by the court. [L. '39, Ch. 185, § 9. Approved and in effect March 17, 1939.]

Section 10 repeals conflicting laws.

CHAPTER 82

WATER COMMISSIONERS — DETERMINATION OF JOINT RIGHTS

Section

7136. Water commissioners — appointment — water distribution — right to petition court for — court may order distribution of stored waters by water conservation board — purpose of act — commissioners' compensation.

7136. Water commissioners — appointment — water distribution — right to petition court for — court may order distribution of stored waters by water conservation board — purpose of act — commissioners' compensation. Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, water course, spring, lake, reservoir, or other source of supply have been determined by a decree or decrees of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least fifteen per cent of the water rights affected by the decree or decrees, in the exercise of his discretion, to appoint one or more commissioner, who shall have authority to admeasure and distribute to the parties bound by the decree or decrees the waters to which they are entitled, according to their rights as fixed by such decree or decrees.

The state water conservation board or any person or corporation operating under contract with said board, or any other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.

Upon the issuance of such order the water commissioner or commissioners shall have authority and it is hereby made his or their duty to admeasure and distribute to the users thereof as their interests may appear and be

required, the stored and supplemental waters stored and as released by the state water conservation board under provisions of the state water conservation act, chapter 35, revised codes of Montana, 1935, to be diverted into and through said streams, ditch or extension of ditch, water course, spring, lake, reservoir, or other source of supply in the same manner and under the same rules and regulations as decreed water rights are admeasured and distributed, and such water commissioner or commissioners and the owners and users of such stored and supplemental waters shall be bound by and be subject to the provisions of chapter 82, civil code, revised codes, 1935, and all acts amendatory thereof and supplemental thereto, provided that the admeasurements and distribution of such stored and supplemental waters shall in no way interfere with decreed water rights. The purpose of this act is to provide a uniform, equitable and economical distribution of adjudicated, stored and supplemental waters.

At the time of the appointment of such water commissioner or commissioners the district court shall fix their compensation, and the owners and users of decreed, stored and supplemental waters shall pay their proportionate share of such fees and compensation. [L. '39, Ch. 187, § 1, amending R. C. M. 1935, § 7136. Approved and in effect March 17, 1939.]

1938. ✓ A court may punish for a contempt committed in its county of a decree of a court in another county. *State ex rel. Swanson v. District Court*, 107 Mont. 203, 82 P. (2d) 779.

1938. ✓ Where a stream and its tributaries flow through more than one county the district court of any of such counties may adjudicate the water rights of the whole watershed system, and the court first acquiring jurisdiction retains it for the purpose of disposing of the whole controversy, and no court of coordinate power may interfere with its action, including the power to appoint one or more commissioners to distribute the water and thus carry its decree into effect. *State ex rel. Swanson et al. v. District Court*, 107 Mont. 203, 82 P. (2d) 779, stating, however, that the rule does not extend to independent rights not adjudicated by the decree in the water right action.

1938. ✓ This section contemplates but one court having jurisdiction of a water right suit. *State ex rel. Swanson et al. v. District Court*, 107 Mont. 203, 82 P. (2d) 779.

1936. ✓ Bill in equity charging unlawful interference with plaintiff's water rights. Parties plaintiff and defendant or their predecessors in interest appropriated water from creek under R. C. M. 1921, section 7093. Water adjudication was had in state court and a commissioner had been appointed by state court each year as provided for under R. C. M. 1921, section 7136, as amended by Laws of 1925, Ch. 125, Par. 1. Held, that action was in effect one to quiet title to real property under R. C. M. 1921, section 7105, and that the state court had maintained continuing jurisdiction over the controversy. That the federal court was not in control

of the res and thus the state court had exclusive jurisdiction as provided in R. C. M. 1921, section 7150 as amended by laws of 1925, Ch. 125, Par. 5. *Sain et al. v. Montana Power Co.*, 84 Fed. (2d) 126. 1935. ✓ In the absence of a showing that a landowner, who was not a party to proceedings adjudicating water rights in a certain stream, not a successor in interest to any such party, interfered with the water commissioner in the performance of his duties, he could not be punished for contempt for violation of the decree. *State ex rel. Reeder v. District Court*, 100 Mont. 376, 47 P. (2d) 653.

7140. Power of commissioners in distributing water—expenses.

1938. ✓ A water commissioner appointed by the district court first acquiring jurisdiction to adjudicate water rights in a watershed extending into several counties is empowered to assess costs and expenses against land benefitted in another county, which constitutes a lien thereon. *State ex rel. Swanson v. District Court*, 107 Mont. 203, 82 P. (2d) 779.

1935. ✓ In the absence of a showing that a landowner, who was not a party to proceedings adjudicating water rights in a certain stream, not a successor in interest to any such party, interfered with the water commissioner in the performance of his duties, he could not be punished for contempt for violation of the decree. *State ex rel. Reeder v. District Court*, 100 Mont. 376, 47 P. (2d) 653.

7143. Further authority of commissioners—arrests.

1938. ✓ The district court first acquiring jurisdiction to adjudicate water rights has jurisdiction to appoint a water commissioner whose authority shall extend over the entire watershed, though the latter extends into other counties, and he may make arrests for interfering with the works of the system in any county into which the watershed extends. *State ex rel. Swanson v. District Court*, 107 Mont. 203, 82 P. (2d) 779.

1935. ✓ In the absence of a showing that a landowner, who was not a party to proceedings adjudicating water rights in a certain stream, not a successor in interest to any such party, interfered with the water commissioner in the performance of his duties, he could not be punished for contempt for violation of the decree. *State ex rel. Reeder v. District Court*, 100 Mont. 376, 47 P. (2d) 653.

7145. Charges and expenses.

1938. ✓ A water commissioner appointed by the district court first acquiring jurisdiction to adjudicate water rights in a watershed extending into several counties is empowered to assess costs and expenses against land benefitted in another county, which constitutes a lien thereon. *State ex rel. Swanson v. District Court*, 107 Mont. 203, 82 P. (2d) 779.

7147. Apportionment of fees and expenses.

1938. ✓ A water commissioner appointed by the district court first acquiring jurisdiction to adjudicate water rights in a watershed extending into several counties is empowered to assess costs and expenses against land benefitted in another county, which constitutes a lien thereon. *State ex rel. Swanson v. District Court*, 107 Mont. 203, 82 P. (2d) 779.

7150. Complaint by dissatisfied user—procedure on.

1936. ✓ A judgment in a suit concerning water rights was reversed and remanded for further proceedings

where the judgment roll in a former suit between the same parties concerning the same subject matter was not introduced in evidence, or other attempt made to show what issues were litigated therein, so that the court could determine whether the water commissioner was distributing the water in accordance with what was there adjudged. *Brennan v. Jones*, 101 Mont. 550, 55 P. (2d) 697.

1936. ✓ If the full amount of the water adjudged to a user by a decree is not used by it the remainder must be returned to the stream for the use of other users in accordance to their priorities, and not delivered by the water commissioner to some favored user. *Brennan v. Jones*, 101 Mont. 550, 55 P. (2d) 697.

1936. The rule that the effect of a judgment as res judicate is not lessened when the fact that it is erroneous is established by the decisions of the highest appellate tribunal of the state, rendered in another action, applied to a water rights suit. *Brennan v. Jones*, 101 Mont. 550, 55 P. (2d) 697.

1936. ✓ A decree adjudging water rights was held conclusive as to issues raised by the pleadings, issues actually litigated on the trial, and as to all things adjudged on the face of the judgment or necessarily determined in order to reach the conclusion there announced, but not conclusive as to all matters which might have been litigated. *Brennan v. Jones*, 101 Mont. 550, 55 P. (2d) 697.

1936. ✓ Bill in equity charging unlawful interference with plaintiff's water rights. Parties plaintiff and defendant or their predecessors in interest appropriated water from creek under R. C. M. 1921, section 7093. Water adjudication was had in state court and a commissioner had been appointed by state court each year as provided for under R. C. M. 1921, section 7136, as amended by Laws of 1925, Ch. 125, Par. 1. Held, that action was in effect one to quiet title to real property under R. C. M. 1921, section 7105, and that the state court had maintained continuing jurisdiction over the controversy. That the federal court was not in control of the res and thus the state court had exclusive jurisdiction as provided in R. C. M. 1921, section 7150 as amended by laws of 1925, Ch. 125, Par. 5. *Sain et al. v. Montana Power Co.*, 84 Fed. (2d) 126.

CHAPTER 83A

WATER USERS' CORPORATIONS AND ASSOCIATIONS FORMED UNDER MONTANA LAW

Section

7165.1. Water users' corporations and associations—continual existence.

7165.2. Articles of incorporation—amendment.

7165.1. Water users' corporations and associations—continual existence. Corporations and water users' associations heretofore or hereafter organized under the laws of the state of Montana for the purpose of acquiring and owning water rights and constructing, maintaining and operating canals, ditches, flumes and other works for conveying water, and reservoirs for storing the same, or for any

of the purposes mentioned in this section, shall have continual existence. [L. '37, Ch. 185, § 1. Approved and in effect March 18, 1937.]

7165.2. Articles of incorporation—amendment. Corporations and water users' associations heretofore organized under the laws of the state of Montana for all or any of the purposes mentioned in section 1 [7165.1] of this act are hereby authorized to amend their articles of incorporation in the manner provided in sections 5917.1 to 5917.4, inclusive, of the revised codes of Montana of 1935, at any time after the taking effect of this act, so as to hereafter have and enjoy the privilege of continual existence. [L. '37, Ch. 185, § 2. Approved and in effect March 18, 1937.]

Section 3 repeals conflicting laws.

CHAPTER 84

IRRIGATION DISTRICTS—ORGANIZATION

7166. Creation of irrigation districts—percentage of title holders required—what constitutes evidence of title—report of state engineer—payment of expenses.

1937. ✓ Although state lands situated within an irrigation district are subject to assessment for the district, since they are not taxes, within the meaning of Const. Art. 12, § 2, or section 1998 of the code, they may not be sold to satisfy the lien of the assessment. *Toole County Irrigation District v. State*, 104 Mont. 420, 67 P. (2d) 989.

1936. ✓ In an action by landowner in irrigation district against district for damages for loss of crops due to the alleged failure to furnish water, held that the damage was due to the plaintiff's failure to construct a lateral from the canal to his land and not to any fault of the district. *Blaser v. Clinton Irrigation District*, 100 Mont. 459, 53 P. (2d) 1141.

7167. Petition for organization.

1938. ✓ Section cited in *State ex rel. Swanson v. District Court*, 107 Mont. 203, 82 P. (2d) 779, in passing on the jurisdiction of the court to appoint water commissioners and the latters' powers.

1935. ✓ Under section 3956 of R. C. M. 1921, it was not required that the petition for the formation of an irrigation district should state the course of the proposed canal and its termini, though the petition was required to be accompanied by a map, but it was necessary that the order of creation contain an accurate description of the district, and if the boundaries were erroneously described the order was void, although properly shown on the map. The court's findings needed to go no farther than to determine what lands were susceptible to irrigation from the proposed system, and would be benefited thereby, and the feasibility of the district. *Blaser v. Clinton Irrigation District*, 100 Mont. 459, 53 P. (2d) 1141.

7169. Hearing on petition and appointment of commissioners.

1938. ✓ Section cited in *State ex rel. Swanson v. District Court*, 107 Mont. 203, 82 P. (2d) 779, in

passing on the jurisdiction of the court to appoint water commissioners and the latters' powers.

1937. ✓ Where the county treasurer wrongfully paid irrigation district warrants while prior warrants were unpaid such money paid out was held to be county funds and not district funds which were held to the credit of the district. *State ex rel. Blenkner v. Stillwater County*, 104 Mont. 387, 66 P. (2d) 788, holding, also, that on such payment the county became subrogated to the rights of the holders of the warrants so paid.

1937. ✓ Irrigation districts are public corporations. *State ex rel. Blenkner v. Stillwater County*, 104 Mont. 387, 66 P. (2d) 788.

1937. ✓ Irrigation taxes, when collected by the county, become county funds to the credit of the district, the relation of debtor and creditor being thus created. *State ex rel. Blenkner v. Stillwater County*, 104 Mont. 387, 66 P. (2d) 788.

1935. ✓ Under section 3956 of R. C. M. 1921, it was not required that the petition for the formation of an irrigation district should state the course of the proposed canal and its termini, though the petition was required to be accompanied by a map, but it was necessary that the order of creation contain an accurate description of the district, and if the boundaries were erroneously described the order was void, although properly shown on the map. The court's findings needed to go no farther than to determine what lands were susceptible to irrigation from the proposed system, and would be benefited thereby, and the feasibility of the district. *Blaser v. Clinton Irrigation District*, 100 Mont. 459, 53 P. (2d) 1141.

1935. ✓ Where the terminus of canal was not fixed in decree creating district, parol evidence was admissible to show the location of the terminus at the time of making the decree, in an action against district to compel extension of canal and damages for loss of crops due to failure of district to furnish water. *Blaser v. Clinton Irrigation District*, 100 Mont. 459, 53 P. (2d) 1141.

1935. ✓ Provision in decree creating irrigation district fixing the terminus of canal was final and could not be varied by parol testimony on collateral attack unless judgment roll was void. *Blaser v. Clinton Irrigation District*, 100 Mont. 459, 53 P. (2d) 1141.

7170. ✓ Qualifications of commissioners and term of office—official bond.

1938. Section cited in *State ex rel. Swanson v. District Court*, 107 Mont. 203, 82 P. (2d) 779, in passing on the jurisdiction of the court to appoint water commissioners and the latters' powers.

7171. Organization of board of commissioners—officers—compensation—office of board to be designated.

1938. ✓ Section cited in *State ex rel. Swanson v. District Court*, 107 Mont. 203, 82 P. (2d) 779, in passing on the jurisdiction of the court to appoint water commissioners and the latters' powers.

7172. Meetings of the board.

1938. ✓ Section cited in *State ex rel. Swanson v. District Court*, 107 Mont. 203, 82 P. (2d) 779, in passing on the jurisdiction of the court to appoint water commissioners and the latters' powers.

CHAPTER 85

IRRIGATION DISTRICTS—BOARD OF COMMISSIONERS—POWERS, DUTIES, AND ELECTIONS

7174. Powers and duties of commissioners.

Note. Powers and duties of commissioners in the matter of destruction of noxious weeds, see §§ 4506, 4506.1.

CHAPTER 86

IRRIGATION DISTRICTS—EXTENSION

Section

7189.1. Orders and decrees—correction of errors—procedure—jurisdiction of court—modification of orders—application—petition—notice—hearing—evidence—order—conclusiveness—filing—appeal.

7189.1. Orders and decrees—correction of errors—procedure—jurisdiction of court—modification of orders—application—petition—notice—hearing—evidence—order—conclusiveness—filing—appeal. The district court shall retain jurisdiction of any petition presented to establish an irrigation district or to enlarge and increase its boundaries, or to exclude land therefrom, for the purpose of correcting any omissions, defects or errors in the proceedings of said court, and shall have power to correct, and if necessary to amend the order of the district court establishing the district or any order extending the boundaries thereof, or any order excluding lands therefrom, including the description of lands included or intended to be included in the district, or excluded therefrom or intended to be excluded, the boundaries of the divisions into which it is divided, and any other matter which shall be before the court on the application to create the district, or to enlarge or extend its boundaries, or to exclude lands therefrom, and shall have and is hereby granted power and authority on application of the board of commissioners of the district, to correct and amend the terms of any order or judgment of said court so that the same shall conform to the provisions of the statute under the authority of which such order was made. The board of commissioners of any district may adopt a resolution directing its president and secretary to prepare, execute and file with the clerk of the district court a petition which shall set forth the following matters:

(1) The name of the district and a reference to the order in which the defect, error or omission, errors in description of lands in-

cluded or excluded, or departure from the statute occurred;

(2) A statement of the defects, errors, omissions, irregularities, errors in description of lands included or excluded, or variance from the statutory requirements;

(3) A prayer for an order correcting said defects, errors, omissions or irregularities.

If the error, defect, omission, irregularity or variance is in the description of any land or lands embraced in the district, the petition shall set forth the correct description of said lands, the names of the holders of title, or evidence of title thereto, ascertained in the manner provided in section 7166 of this code; and if any holder is a non-resident of the county or counties in which the district lies, the post office address of such non-resident owner if known. Upon the filing of said petition, the court shall direct notice of the hearing thereof to be given in such manner as shall be deemed necessary to protect the rights and interests of the parties, and after a hearing of any parties intervening, shall enter an order correcting the said defects, errors, omissions, or irregularities; provided, however, that if the defects, errors, omissions or irregularities are in the description of the lands embraced in the district, the district court or judge shall direct the clerk of said court to publish, at least once a week for two successive calendar weeks, in some newspaper published in said county where said petition is filed, a copy of said petition, together with a notice stating the time and place by said district court fixed, when and where a hearing on said petition will be had, and, if any portion of the lands within said district lies within any other county or counties said petition and notice shall be published as above provided in a newspaper published in each such other county. If there be no newspaper published in such county, such petition and notice may be published in an adjoining county. The first publication of said petition and notice shall be not less than thirty days prior to the time mentioned in said notice for said hearing. If any holder of title or evidence of title to lands within the district is a non-resident of the county or counties in which the district lies, the clerk of said court shall, within three days after the first publication aforesaid, mail a copy of said petition and notice to each such non-resident, whose post office address is stated in said petition. The certificate of the clerk of the district court, under the seal of the court, as to the facts of the publishing and mailing of said petition and notice, affixed to a copy of said notice, shall be sufficient evidence of such facts.

At the time specified in the notice the district court, in which the petition aforesaid is filed, shall hear the petition but may adjourn such hearing from time to time, and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners or any person or persons interested, shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing, all persons interested may appear and contest the application for the order prayed for in the petition, and the contestants and petitioners may offer any competent evidence pertinent to the prayer of the petition.

The court may make such changes in the description of the lands embraced within the limits of the district, as may be deemed advisable, or as fact, right and justice may require, but shall not exclude from the district any lands described as a part of said district in the order creating it, after the district has issued bonds or entered into a contract with the United States under section 7174 of this code; (provided, however, that such lands may be excluded from a district which has entered into a contract with the United States under said section, provided the secretary of the interior shall give his consent to such exclusion).

If, on final hearing, it is found by the court that the petition does not substantially comply with the foregoing requirements of this section, or that the facts therein stated are not sustained by the evidence, then the court shall dismiss the petition at the cost of the petitioners, and shall make and enter an order to that effect, but if it is found that said petition substantially complies with said requirements, and that the facts therein stated are sustained by the evidence, the court shall make and enter an order in accordance with the prayers of the petition.

All orders and findings of the district court, made under the provisions of this section, shall be conclusive upon all owners of lands within the district, and shall be final unless appealed from to the supreme court within sixty days from the date of entry of such order. A copy of such order, duly certified to by the clerk of said court, shall be filed for record within thirty days after such order is made and entered with the county clerk and recorder of the county wherein the lands included within such district are situated; provided, however, that there shall be omitted from such copy lands not situated in the county in which such copy is filed. [L. '37, Ch. 13, § 1, amending R. C. M. 1935, § 7189.1. Approved and in effect February 10, 1937.

CHAPTER 88

IRRIGATION DISTRICTS—RIGHTS-OF-WAY—USE AND APPORTIONMENT OF WATER

Section

7196.1. Irrigation works—construction across watercourses, highways, railways, etc.—power of water conservation board—eminent domain—state lands.

7196.1. Irrigation works — construction across watercourses, highways, railways, etc.—power of water conservation board—eminent domain—state lands. The state water conservation board of the state of Montana shall have the power to construct irrigation works across any stream of water, watercourse, streets, avenues, highways, railways, canals, ditches or flumes which the route of said canal or canals may intersect or cross, in such manner as to afford security to life and property; but the board shall restore the same, when so crossed or intersected, to its former state, as near as may be, so as not to destroy its usefulness; and every company whose railroads shall be intersected or crossed by said works shall unite with said board in forming said intersection and crossing; and if such railroad company and said board, or the owners and controllers of said property, thing, or franchise so to be crossed cannot agree upon the amount to be paid therefor, or the points or the manner of said crossing or intersections, the same shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

But nothing herein contained shall require the payment to the state or any subdivision thereof, of any sum for the right to cross any public highway with any such works. The right-of-way is hereby given, dedicated, and set apart to locate, construct, and maintain said works over and through any of the lands which are now or hereafter may be the property of this state. [L. '37, Ch. 69, § 1. Approved and in effect March 1, 1937.

7207.5. Power of commissioners to install and assess cost of distributing or measuring devices.

1938. ✓ Section cited in State ex rel. Swanson v. District Court, 107 Mont. 203, 82 P. (2d) 779, in passing on the jurisdiction of the court to appoint water commissioners and the latter's powers.

CHAPTER 89

IRRIGATION DISTRICTS—BONDS

7210. Petition for bonds and action thereon.

1937. ✓ Although state lands situated within an irrigation district are subject to assessment for the

district, since they are not taxes, within the meaning of Const. Art. 12, § 2, or section 1998 of the code, they may not be sold to satisfy the lien of the assessment. *Toole County Irrigation District v. State*, 104 Mont. 420, 67 P. (2d) 989.

1936. ✓ Where the court had jurisdiction of the parties and the subject matter involved, a decree confirming the validity of an irrigation bond issue held not invalid on the ground that levies and appurtenant reserve fund were not authorized by statute in absence of appeal or excuse for failure to appeal therefrom. *Midland Development Co. v. Cove Irrigation District*, 102 Mont. 479, 58 P. (2d) 1001.

7211. Confirmation by district court.

1936. ✓ Where the court had jurisdiction of the parties and the subject matter involved, a decree confirming the validity of an irrigation bond issue held not invalid on the ground that levies and appurtenant reserve fund were not authorized by statute in absence of appeal or excuse for failure to appeal therefrom. *Midland Development Co. v. Cove Irrigation District*, 102 Mont. 479, 58 P. (2d) 1001.

7213. Liens of bonds.

1937. ✓ Provision of section 7229 of R. C. M. of 1921, since repealed, making any special tax or assessment of an irrigation district for the payment of the principal and interest of district bonds a lien upon the lands upon which levied, became a part of the bondholders' contract with the district in the same way as if it had been incorporated in the bonds themselves. *Toole County Irrigation District v. State*, 104 Mont. 420, 67 P. (2d) 989.

1937. ✓ Although state lands situated within an irrigation district are subject to assessment for the district, since they are not taxes, within the meaning of Const. Art. 12, § 2, or section 1998 of the code, they may not be sold to satisfy the lien of the assessment. *Toole County Irrigation District v. State*, 104 Mont. 420, 67 P. (2d) 989.

1936. ✓ Purchaser of land in irrigation district at tax sale takes land free from lien of prior issued irrigation bonds. *Rosebud Land & Improvement Co. v. Carterville Irrigation District*, 102 Mont. 456, 58 P. (2d) 765.

7231.1. Limitation of actions attacking decrees—validation of districts and district acts.

1937. ✓ Although state lands situated within an irrigation district are subject to assessment for the district, since they are not taxes, within the meaning of Const. Art. 12, § 2, or section 1998 of the code, they may not be sold to satisfy the lien of the assessment. *Toole County Irrigation District v. State*, 104 Mont. 420, 67 P. (2d) 989.

CHAPTER 90

IRRIGATION DISTRICTS—TAXES AND ASSESSMENTS

7232. Tax or assessment to pay bonds and interest.

1937. ✓ Provision of section 7229 of R. C. M. of 1921, since repealed, making any special tax or assessment of an irrigation district for the payment of the principal and interest of district bonds a lien upon the lands upon which levied, became a part of

the bondholders' contract with the district in the same way as if it had been incorporated in the bonds themselves. *Toole County Irrigation District v. State*, 104 Mont. 420, 67 P. (2d) 989.

1937. ✓ Although state lands situated within an irrigation district are subject to assessment for the district, since they are not taxes, within the meaning of Const. Art. 12, § 2, or section 1998 of the code, they may not be sold to satisfy the lien of the assessment. *Toole County Irrigation District v. State*, 104 Mont. 420, 67 P. (2d) 989.

1936. ✓ Purchaser of land in irrigation district at tax sale takes land free from lien of prior issued irrigation bonds. *Rosebud Land & Improvement Co. v. Carterville Irrigation District*, 102 Mont. 456, 58 P. (2d) 765.

7234. All irrigable lands chargeable alike.

1936. ✓ Purchaser of land in irrigation district at tax sale takes land free from lien of prior issued irrigation bonds. *Rosebud Land & Improvement Co. v. Carterville Irrigation District*, 102 Mont. 456, 58 P. (2d) 765.

7235. Annual tax levy — apportionment when tracts divided.

1937. ✓ Where there were no funds in the county treasury to pay warrants outstanding, levies having been made but not collected, the right of action on warrants did not accrue until collection and money was put in treasury, and statute of limitations against right to mandamus treasurer to pay them did not begin to run until that time. *State ex rel. De Kalb v. Ferrell*, 105 Mont. 218, 70 P. (2d) 290.

1937. ✓ Although state lands situated within an irrigation district are subject to assessment for the district, since they are not taxes, within the meaning of Const. Art. 12, § 2, or section 1998 of the code, they may not be sold to satisfy the lien of the assessment. *Toole County Irrigation District v. State*, 104 Mont. 420, 67 P. (2d) 989.

7239. County treasurer as custodian of district funds.

1937. ✓ Since it is the duty of the county treasurer to pay out no funds not authorized by law he could, in mandamus to compel him to pay funds that he had not set aside as irrigation district funds, assert defense that five year limitation for bringing mandamus had past, where he acted in good faith. *State ex rel. De Kalb v. Ferrell*, 105 Mont. 218, 70 P. (2d) 290.

1937. ✓ Where the county treasurer wrongfully paid irrigation district warrants while prior warrants were unpaid such money paid out was held to be county funds and not district funds which were held to the credit of the district. *State ex rel. Blenkner v. Stillwater County*, 104 Mont. 387, 66 P. (2d) 788, holding, also, that on such payment the county became subrogated to the rights of the holders of the warrants so paid.

1937. ✓ Irrigation taxes, when collected by the county, become county funds to the credit of the district, the relation of debtor and creditor being thus created. *State ex rel. Blenkner v. Stillwater County*, 104 Mont. 387, 66 P. (2d) 788.

7240.1. County commissioners to levy irrigation taxes and assessments, when.

1937. Cited and applied in *State ex rel. Blenkner v. Stillwater County*, 104 Mont. 387, 66 P. (2d) 788.

7246. Sale by county commissioners when land not redeemed.

1936. ✓ Purchaser of land in irrigation district at tax sale takes land free from lien of prior issued irrigation bonds. *Rosebud Land & Improvement Co. v. Carterville Irrigation District*, 102 Mont. 465, 58 P. (2d) 765.

7249. Liability of county treasurers.

1937. ✓ Since it is the duty of the county treasurer to pay out no funds not authorized by law he could, in mandamus to compel him to pay funds that he had not set aside as irrigation district funds, assert defense that five year limitation for bringing mandamus had past, where he acted in good faith. *State ex rel. De Kalb v. Ferrell*, 105 Mont. 218, 70 P. (2d) 290.

CHAPTER 93

IRRIGATION DISTRICTS—APPEALS AND MISCELLANEOUS PROVISIONS

Section

7264.14a. Liquidation of indebtedness—bankruptcy proceeding.

7264.14b. Same—purpose and construction of act.

7264.19. Disposition of property—securing financial aid from water conservation board.

7264.20. Cessation of operation—disposition of property for reclaiming other land.

7264.14a. Liquidation of indebtedness — bankruptcy proceeding. The board of commissioners or directors of any irrigation district may, in the name and on behalf of such district, initiate and carry out proceedings for readjustment of the debts of such district, under chapter IX of the federal bankruptcy act, or similar provisions of any past or future federal bankruptcy act; and all such proceedings heretofore taken by any irrigation district or the officers thereof are hereby ratified and confirmed as valid acts of the district. [L. '39, Ch. 110, § 1. Approved and in effect March 3, 1939.]

7264.14b. Same—purpose and construction of act. This statute is remedial in its nature and shall be liberally construed to effect its purpose, which is to permit irrigation districts to readjust their debts under federal bankruptcy acts and to confer upon the board of commissioners or directors thereof every power necessary therefor or reasonably incidental thereto. [L. '39, Ch. 110, § 2. Approved and in effect March 3, 1939.]

Section 3 repeals conflicting laws.

7264.19. Disposition of property—securing financial aid from water conservation board. That in addition to all other powers heretofore granted any irrigation district, existing under the laws of Montana, for the purpose of securing financial aid in any form from the state

water conservation board, shall be authorized and empowered to convey, assign, transfer and set over to the said state water conservation board all or any part of its property, including all water rights, rights of way, and easements for reservoirs, reservoir sites, canals, ditches, laterals, and headgates, as may be required by the said board as a condition to furnishing such financial aid or assistance. [L. '37, Ch. 191, § 1. Approved and in effect March 18, 1937.]

7264.20. Cessation of operation—disposition of property for reclaiming other land. If any irrigation district has ceased operation, such district prior to its dissolution shall be authorized and empowered to convey, assign, transfer and set over to any person or association of persons all or any part of its said property enumerated in section 1 [7264.19], hereof, for the purpose of irrigating and reclaiming any or all other land which can be served and irrigated therefrom. [L. '37, Ch. 191, § 2. Approved and in effect March 18, 1937.]

CHAPTER 94

DRAINAGE DISTRICTS

Section

7364.7-7364.29. Repealed.

7307. Report as to assessments.

1935. ✓ Section 7307, as amended, seeking to make the provision broader and more comprehensive, was not an admission by the legislature that the statute was not originally broad enough to cover assessments of counties for benefits to highways. *State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County*, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Specific provisions of the drainage law in regard to payment of assessments against counties control over general laws. *State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County*, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Assessment against county for benefits to highways from drainage district are "mandatory expenditures required by law" under section 4613.6 of the budget law and are required to be paid as there provided. *State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County*, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Mandate to the county commissioners to pay judgments on assessments on county for benefits to highways from drainage district, as "mandatory expenditures required by law," under section 4613.6, held improper where the chairman of the board and the county clerk were not joined as respondents, there being no money in the treasury to make the payment, since all the commissioners could do would be to issue warrants for payment. *State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County*, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Judgments against counties for drainage assessments are not unliquidated claims, but constitute "amounts fixed by law" under this section, and are not required to be audited by the county board. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

7310. Report as to special benefits to corporations.

1935. ✓ Section 7307, as amended, seeking to make the provision broader and more comprehensive, was not an admission by the legislature that the statute was not originally broad enough to cover assessments of counties for benefits to highways. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Specific provisions of the drainage law in regard to payment of assessments against counties control over general laws. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Under this act a county may be assessed on account of benefits to highways. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ The whole drainage act must be read together and all of its provisions considered in construing it as to whether a county may be assessed on account of benefits to the highways. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Assessments against county for benefits to highways from drainage district are "mandatory expenditures required by law" under section 4613.6 of the budget law and are required to be paid as there provided. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Mandate to the county commissioners to pay judgments on assessments on county for benefits to highways from drainage district, as "mandatory expenditures required by law," under section 4613.6, held improper where the chairman of the board and the county clerk were not joined as respondents, there being no money in the treasury to make the payment, since all the commissioners could do would be to issue warrants for payment. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Judgments against counties for drainage assessments are not unliquidated claims, but constitute "amounts fixed by law" under this section, and are not required to be audited by the county board. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

7326. Lien of assessments—payment assessments against state lands.

1939. ✓ The right to take a tax deed against the state is not a vested right, but a remedial right, which may be taken away by the state. State ex rel. Freebourn v. Yellowstone County, Mont., 88 P. (2d) 6.

7332. Assessments against certain corporations—when payable.

1935. ✓ Judgments against counties for drainage assessments are not unliquidated claims, but constitute "amounts fixed by law" under this section,

and are not required to be audited by the county board. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Mandate to the county commissioners to pay judgments on assessments on county for benefits to highways from drainage district, as "mandatory expenditures required by law," under section 4613.6, held improper where the chairman of the board and the county clerk were not joined as respondents, there being no money in the treasury to make the payment, since all the commissioners could do would be to issue warrants for payment. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Assessments against county for benefits to highways from drainage district are "mandatory expenditures required by law" under section 4613.6 of the budget law and are required to be paid as there provided. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ The whole drainage act must be read together and all of its provisions considered in construing it as to whether a county may be assessed on account of benefits to the highways. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Under this act a county may be assessed on account of benefits to highways. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Specific provisions of the drainage law in regard to payment of assessments against counties control over general laws. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

1935. ✓ Section 7307, as amended, seeking to make the provision broader and more comprehensive, was not an admission by the legislature that the statute was not originally broad enough to cover assessments of counties for benefits to highways. State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County, 100 Mont. 581, 51 P. (2d) 635.

7364. Repealing clause—exceptions.

1939. ✓ The right to take a tax deed against the state on state lands was not saved by the exception in the above section, and the exceptions apply only to the contractual relations existing between the drain district and the purchasers of the bonds and warrants, and parties who have sold supplies and materials to the district or who have done work of construction within the district. State ex rel. Freebourn v. Yellowstone County, Mont., 88 P. (2d) 6.

7364.7-7364.29. Repealed. [L. '39, Ch. 208, § 32. See §§ 7364.29-31.

CHAPTER 94A

GRASS CONSERVATION ACT

Section

7364.29-1. Title of act—purposes—grazing districts—incorporation—cooperation with federal agencies—Taylor grazing act—stabilization of livestock industry—commissioners.

Section

- 7364.29-2. Definitions.
- 7364.29-3. Grass conservation commission—membership—terms.
- 7364.29-4. Meetings — annual — special — quorum — records — documents — signatures.
- 7364.29-5. Secretary — compensation — functions — rules.
- 7364.29-6. Commission — members — compensation — expenses — audit — claims — audit — payment — warrants.
- 7364.29-7. Commission — powers — districts — grazing associations — witnesses — subpoenas — submission of district records — meetings — delegation of power to hold — employees — cooperation with other agencies.
- 7364.29-8. Decisions of secretary — appeals — decisions of commission — appeals.
- 7364.29-9. Conservation districts — incorporation — certificate of approval by commission.
- 7364.29-10. Conservation districts — articles of incorporation — contents.
- 7364.29-11. Map of district — filing — appeals — evidence.
- 7364.29-12. Powers of districts.
- 7364.29-13. District directors — powers and duties.
- 7364.29-14. Districts — membership — permittee members — disposition of land — purchaser's membership.
- 7364.29-15. District — by-laws — approval by commission — amendments.
- 7364.29-16. Leasing available state land — duty of district — duty of commission.
- 7364.29-17. Commission — duty to advise land commissioners and county commissioners.
- 7364.29-18. Conformance with act — what district must — articles of incorporation — amendment.
- 7364.29-19. Mizpah pumpkin creek grazing district.
- 7364.29-20. Grazing preferences — distribution — temporary permits.
- 7364.29-21. Grazing preferences — application for.
- 7364.29-22. Grazing preferences — appurtenance to dependent commensurate property — alienation of land — non-use permits — grazing fees — revocation of preference.
- 7364.29-23. Range improvements — compensation by subsequent owners or lessees — fixing amount.
- 7364.29-24. Surplus assets of district — when permittee to receive — set-off — new member receiving grazing preference — payment required.
- 7364.29-25. Dissolution of district — assets — distribution — procedure — reports.
- 7364.29-26. Grazing stock within district or crossing it — permit or privilege — necessity — violation — penalty — trespassing stock — impoundage — fences within district.
- 7364.29-27. Land in district not controlled by district — grazing permits to owner — regulations in use thereof — damages caused by stock grazing under permit.
- 7364.29-28. State grass conservation fund — fees — refund.
- 7264.29-29. Fees against districts — imposition by commission — purpose — disposition — failure to pay — remedy.
- 7364.29-30. Wild game range — provision for — state fish and game commission — beaver doing damage — transfer.
- 7364.29-31. Repeals.

7364.29-1. Title of act—purposes—grazing districts — incorporation — cooperation with federal agencies—Taylor grazing act—stabilization of livestock industry — commissioners. This act may be cited as the "grass conservation act". Its purpose is to provide for the conservation, protection, restoration, and proper utilization of grass, forage and range resources of the state of Montana, to provide for the incorporation of cooperative non-profit grazing districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor grazing act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ranch properties as defined herein. This act provides a state grass conservation commission to assist in carrying out the purposes of this act, to act in an advisory capacity with the state land board and county commissioners, and to supervise and coordinate the formation and operation of districts which may be incorporated under this act. [L. '39, Ch. 208, § 1. Approved and in effect March 17, 1939.]

7364.29-2. Definitions. The following words and phrases used in this act shall take the following interpretations:

1. "The commission" means "the Montana grass conservation commission."
2. "State district" means a non-profit cooperative organization incorporated under the provisions of this act and its board of directors. "State district" also includes all lands, owned or controlled by the state district or its members.
3. "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.
4. "Permits" are evidence of grazing privileges granted by state districts.
5. A "grazing preference" is a right to obtain a grazing permit from a state district. It is attached to dependent commensurate property except as provided in this act.
6. "Secretary" means the state secretary to the state grass conservation commission appointed under this act.

7. "Person" means natural person or persons, unincorporated associations, partnerships, corporations and governmental departments or agencies.

8. "Commensurate property" means land privately owned or controlled which is not range as herein defined.

9. "Dependent commensurate property" is commensurate property which requires the use of range in connection with it to maintain its proper use, and which produces or whose owner furnishes as part of his past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range, and which has been used in connection with the range for a period of any three years or for any two consecutive years in the five-year period immediately preceding June 28, 1934.

10. "Animal unit" means one cow, one horse, or five sheep, six months old or over.

11. "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in paragraph 6, section 12 [7364.29-12]. "Assessment" does not include fees.

12. All other words used herein shall receive the usual and ordinary interpretation. [L. '39, Ch. 208, § 2. Approved and in effect March 17, 1939.]

7364.29-3. Grass conservation commission—membership—terms. There is hereby created the Montana grass conservation commission of the state of Montana which commission shall be composed of five members with the powers and duties specified in this act. Such members shall be appointed by the governor of the state and approved by the senate, for four-year terms or until their successors are appointed and qualified; provided, however, three members of the first five appointed after the passage and approval of this act shall serve for terms as follows: One for a one-year term and one for a two-year term and one for a three-year term; at the expiration of these terms all subsequent appointments except those filling vacancies in unexpired terms, shall be for four years. All regular terms of such members shall begin upon April first. The governor, giving full consideration to representation to large and small operators, shall appoint one representative member and livestock operator who is either an officer or a director of an organized state grazing district, from each of the following groups:

(1) One member from the Montana stock-growers association;

(2) One member from the Montana wool-growers association;

(3) One member from the county commissioners association;

(4) One member from one of the cooperative state grazing districts, and the fifth (5th) member to be a person representing the general public familiar with the livestock industry. If a vacancy occurs on the commission the governor shall, within thirty days, fill such vacancy for the unexpired term from the group from which said vacancy shall occur. Expired terms shall be filled by appointment from the group to which the retiring member belonged. [L. '39, Ch. 208, § 3. Approved and in effect March 17, 1939.]

7364.29-4. Meetings — annual — special — quorum — records — documents — signatures. The members of the commission shall meet annually at the state capitol on the third Monday in June at which meeting the commission shall select its officers who shall serve during the ensuing year, and may hold special meetings at such time and place as may be necessary, said meetings to be called by the chairman, or by a majority of the commission, upon at least five days notice to each commissioner and to the secretary, and to be held at the time and place specified in the call for the same. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The said commission shall keep a record of all business transacted by it. The chairman and the secretary of the commission shall sign all orders, minutes, or other documents of the commission. [L. '39, Ch. 208, § 4. Approved and in effect March 17, 1939.]

7364.29-5. Secretary — compensation — functions—rules. The commission shall select and appoint a secretary at a salary of not to exceed two hundred and fifty dollars (\$250.00) per month. The secretary shall be the executive officer of the commission and shall be controlled and directed by the rules and regulations established by the commission from time to time and applicable to the duties of his office. The commission shall fix the salary of the secretary. [L. '39, Ch. 208, § 5. Approved and in effect March 17, 1939.]

7364.29-6. Commission — members — compensation — expenses — audit — claims — audit—payment—warrants. The members of the commission shall receive no compensation for their services but shall be allowed their actual expenses while attending meetings, such expenses to be audited, allowed and paid as herein provided.

The commission shall audit all claims, accounts, or bills for expenses or expenditures incurred by it, by its employees. If the com-

mission approves them, they shall be certified to the board of examiners of the state of Montana. When approved by such board, said claims, accounts, or bills, shall be transmitted to the state auditor who shall thereupon draw a warrant upon the state grass conservation fund in payment thereof; provided that the board may by resolution authorize the secretary to audit and certify all expenses, salaries, and expense accounts of the commission, or its employees, and such audit shall be made a part of the commissioners' report to the governor, a copy of which shall be sent to all state districts coming under the provisions of this act. [L. '39, Ch. 280, § 6. Approved and in effect March 17, 1939.]

7364.29-7. Commission — powers — districts — grazing associations — witnesses — subpoenas — submission of district records — meetings — delegation of power to hold — employees — co-operation with other agencies. The Montana grass conservation commission shall have the powers enumerated by the act, and shall have such other and further powers as shall be necessary and incidental to fully carry out such enumerated powers, and shall also have such other and further powers as shall be necessary and incidental to fully carry out the purpose and intent of this act. The powers of the Montana grass conservation commission shall include the power:

1. To prepare and standardize various forms to be used by the state districts. To supervise or regulate the organization and operation of all state districts incorporated under this act, or grazing associations incorporated under chapter 66, laws of 1933, or chapter 195, laws of 1935 [7364.7-7364.19], in accordance with the provisions of this act. To require any grazing association claiming to be incorporated under chapter 66, of laws of 1933, or chapter 195, laws of 1935 [7364.7-7364.19], but which has not completed its internal organization or not functioning, to complete its organization under this act within a reasonable time. In default thereof the commission may declare the said association dissolved and same shall be thereupon dissolved. In the event that any state district or the directors of any state district shall fail to comply with an order of the commission, said commission may order a hearing thereon within the district or county and cite said directors of said district to appear before said board; and if upon said hearing it appears that said board members refuse to perform the duties of their office as herein defined and as set forth in the articles of incorporation and the by-laws of said association, or refused to comply with a lawful order of said commission, the members of said board of directors may be summarily removed from

office, and thereupon said district shall elect new officers. During such period until such new election the commission shall have the authority to operate and manage the affairs of such state district or to delegate such authority to the secretary or other suitable person or persons. The expense of operating and managing the affairs of a non-complying state district shall be paid by such non-complying state district before it can be reinstated.

2. To issue citations directed to any person requiring his attendance before the commission, and to subpoena witnesses and pay such expenses as would be allowed in a court action.

3. To require any officer or director of a state district to submit any or all records of such state district to the commission for the purpose of aiding any investigation conducted by or under the authority of the commission or the secretary.

4. To delegate to the secretary or any one or more of its members the power and authority to hold hearings on any matters affecting the commission. The secretary or any such members so delegated shall make a full report of such hearings to the commission.

5. To require state districts to furnish itemized financial reports annually.

6. The commission shall have the power to hire or discharge employees and legal counsel; to fix their wages or salaries and to designate their duties, and may incur such other expenses as may be necessary for the proper performance of its duties and the exercise of its powers.

7. To fully cooperate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency, in order to promote the purposes of this act. [L. '39, Ch. 208, § 7. Approved and in effect March 17, 1939.]

7364.29-8. Decisions of secretary—appeals—decisions of commission—appeals. Appeals may be taken from the decisions of the secretary, and the commission shall have jurisdiction to hear and decide all such appeals. An appeal from the decision by the secretary may be taken by filing a notice of appeal with the commission within sixty (60) days after the rendition of the decision by the secretary and notice thereof served upon the interested parties, or their attorneys, by registered mail by said secretary. The appeal to the commission shall be taken and review thereof had upon the record of the hearing conducted by the secretary and the decisions of said commission shall contain findings of fact which shall be conclusive except for the right to a judicial review as hereinafter provided.

An appeal from the decision of said commission may be taken to the district court wherein a portion of lands in said district lies. An appeal to the district court may be taken by filing a notice of appeal with said district court within thirty (30) days after the rendition of the decision by said commission and notice thereof given to the interested parties, or their attorneys, by registered mail. Thereafter the said commission must file with the clerk of such district court a transcript of the record of the hearing conducted by the secretary and of the decision of said commission. The appeal by the district court may be upon the record on file with said commission, or the district judge of said district may take additional evidence to supplement said record. [L. '39, Ch. 208, § 8. Approved and in effect March 17, 1939.]

7364.29-9. Conservation districts—incorporation—certificate of approval by commission. Whenever three or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district, shall decide to incorporate a state district, they shall submit a statement in writing to the commission together with a plat showing the proposed boundaries of the area. Such statement shall set forth the name of the proposed state district; the county or counties in which such proposed state district is located; and the names and addresses of all operators of land and livestock units within said area. The commission may then require any additional information it may deem necessary. On receipt of the said statement and plat and such additional information, the commission shall fix the time and place of a hearing for approval within the district or county, which shall not be less than thirty days or more than sixty days after receipt of said statement. The persons deciding to incorporate said state grazing district shall then cause notice of said hearing to be given by publishing a notice prescribed by the commission once a week for two successive weeks, the first publication to be at least thirty days prior to the date of hearing, in a newspaper of general circulation in such area. The secretary, for and on behalf of the commission, shall hear evidence offered in support of, or in opposition to the creation of said state district, and shall make a full inquiry into the advisability of the creation thereof; the record taken upon the hearing, together with the report of the secretary, shall be submitted to the commission. If the creation of said state district shall appear feasible, beneficial and desirable to the majority of those who own or control more than fifty per cent of the lands to be included in

such district the commission may issue a certificate of approval. [L. '39, Ch. 208, § 9. Approved and in effect March 17, 1939.]

7364.29-10. Conservation districts—articles of incorporation—contents. Upon the issuance of the certificate of approval, three or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the office of the secretary of state without payment of any fees; said articles to be accompanied by the said certificate of approval and to be signed, sealed, and acknowledged. Such articles as prescribed by the commission shall substantially state the following:

1. The name of the state district, the last four words of which shall be "cooperative state grazing district".

2. The county or counties in which said state district is located, and the place where the principal office and business of the state district will be conducted.

3. The membership fee for each member of the state district which shall not in any case be more than five dollars (\$5.00).

4. The term for which said state district is incorporated, which shall not exceed forty years.

5. The names and residences of the persons who subscribe together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district.

6. The powers of the state district, which must not be inconsistent with the provisions of this act.

7. The officers of the state district, their principal duties, and the principal duties of the board of directors.

8. The purpose for which the state district is incorporated. If the said articles substantially comply with the requirements herein set forth and are accompanied by the certificate of approval, the secretary of state shall issue to such state district a certificate of incorporation. All amendments to articles of incorporation shall also be filed by the secretary of state without charge. [L. '39, Ch. 208, § 10. Approved and in effect March 17, 1939.]

7364.29-11. Map of district—filing—appeals—evidence. State grazing districts organized under this act shall, upon completion of their organization, file with the county clerk of each county in which their lands lie, a map or plat of the external boundaries of such state district so created and a copy of their articles of incorporation. Whenever the boundaries of a state district shall be changed, and such

change approved by the commission, the state district shall file with the county clerk or clerks a map or plat indicating such changed boundaries. Whenever the articles of incorporation shall be amended, such amendment shall be filed with said county clerk or clerks. It shall be the duty of any person herding or in control of any livestock in the approximate vicinity of any state districts to ascertain the boundary lines thereof. [L. '39, Ch. 208, § 11. Approved and in effect March 17, 1939.]

7364.29-12. Powers of districts. Each state district organized under this act shall have the power:

1. To purchase or market livestock and livestock products, to purchase supplies and equipment. Such supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.

2. To sue or be sued in its corporate name.

3. To acquire forage producing lands by lease, purchase, cooperative agreements, or otherwise, either from the United States, the state of Montana, county or counties in which said lands are located, or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale or otherwise.

4. To manage and control the use of its range. This power shall include the right to determine the size of preferences and permit according to a fixed method which shall be stated in the by-laws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range, and may be subject to reservations, regulations and limitations under the terms of agreements between the state district and any agency of the United States. It shall also include the power to allot range to members or non-members, and to decrease or increase the size of permits if the range carrying capacity changes.

5. To acquire or construct fences, reservoirs, or other facilities for the care of livestock, and to lease or purchase lands for such purposes.

6. To fix and determine the amount of grazing fees to be imposed on members or non-members for the purpose of paying leases, and operating expenses. To fix and determine assessments and the amount thereof, to be made on members on an animal unit basis for the purpose of acquiring lands by purchase, or for the purpose of constructing improvements in said state district.

7. To specify the breed, quality, and number of male breeding animals which each member must furnish when stock is grazing in common in the state district.

8. To employ and discharge employees, riders, and other persons necessary to properly manage the state district.

9. To set up and maintain a reasonable reserve fund.

10. To borrow money, and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least eighty per cent of the permittee members of the state district consent in writing to such borrowing and such borrowing has been approved by the state grass conservation board; provided, however, that nothing herein contained shall be implied as conferring power upon any state district to mortgage the property of the individual members of the district.

11. To change the boundaries of a district, to merge with another state district organized under this act, or to sub-divide.

(a) No such merger shall be made unless consented to by a majority of the members of each merging state district, and approved by the commission.

(b) And no sub-division shall be made unless consented to by a majority of the members in the affected area and approved by the commission.

12. To regulate the driving of stock over, across, into, or through the range, and to collect fees therefor. To impose sanitary provisions, regulations and practices.

13. To undertake reseeding and other approved conservation and improvement practices of depleted range areas or abandon farm lands and enter into cooperative agreements with the federal government or an agency thereof or any other party or parties for such reseeding or conservation and improvement practices.

14. To do and perform any and all other acts in conformity with the provisions of this act, or incidental or necessary for the purpose of carrying out the full purchase and intent of this act. [L. '39, Ch. 208, § 12. Approved and in effect March 17, 1939.]

7364.29-13. District directors — powers and duties. The directors of the state district shall manage and exercise the powers of such state district subject to its by-laws and to the regulation of the commission as provided in this act. [L. '39, Ch. 208, § 13. Approved and in effect March 17, 1939.]

7364.29-14. Districts — membership — permittee members — disposition of land — purchaser's membership. Membership in the district is limited to persons, partnerships, corporations and associations engaged in the livestock business who own or lease forage producing lands within or near the district except that the agent of any person, association, partnership or corporation entitled to membership in the district, may become a member in place of his principal. If any agent becomes a member his qualifications for membership and his obligations to and the privileges in the district shall be measured by those his principal would have had if he had elected to become a member. No agent and his principal shall both be members of the district unless such agent has individual qualifications for membership which are separable from and independent of those of his principal. Permittee members only shall be entitled to vote on all issues submitted to a vote of the members. No such member shall have more than one vote. Voting by proxy shall not be permitted. All members who possessed preferential grazing permits during the preceding grazing season or who possess such a permit at the time of voting shall be designated as permittee members.

When any member shall dispose of a part of the lands or leases owned by him so that another shall become the owner of such lands or leases and acquire right to membership, then the rights and interests involved shall be determined by the directors of the state district with the approval of the commission. [L. '39, Ch. 208, § 14. Approved and in effect March 17, 1939.]

7364.29-15. Districts — by-laws — approval by commission — amendments. Each state district incorporated under this act shall within sixty (60) days after its incorporation adopt by-laws approved by the commission. Such by-laws may be amended or revised with the approval of the commission. [L. '39, Ch. 208, § 15. Approved and in effect March 17, 1939.]

7364.29-16. Leasing available state land — duty of district — duty of commission. Any state land situated within the boundaries of any grazing district created by this act, not otherwise disposed of by the state board of land commissioners, must be leased by such grazing district at a reasonable rental, when offered for lease to the officers of such grazing district by the state board of land commissioners; provided, however, that the officers of such grazing district may appear or submit evidence in writing before the state board of land commissioners and show reason and

cause for a change in such rental. If such cause there be, the state board of land commissioners may cause a reappraisal of the land in question. It shall be the duty of the grass conservation commission to require that all state districts comply with this section. [L. '39, Ch. 208, § 16. Approved and in effect March 17, 1939.]

7364.29-17. Commission — duty to advise land commissioners and county commissioners. The Montana grass conservation commission may act in an advisory capacity to the state board of land commissioners and board of county commissioners for the purpose of working out uniform plans for the use of lands lying within or without the boundaries of grazing districts, in conformity with recognized conservation and stabilization policies. [L. '39, Ch. 208, § 17. Approved and in effect March 17, 1939.]

7364.29-18. Conformance with act — what districts must — articles of incorporation — amendment. All grazing associations incorporated under chapter 66, laws of 1933, of chapter 195, Laws of 1935 [7364.7-7364.19], shall within six months amend their articles of incorporation and their by-laws to conform with the provisions of this act. Any district organized hereunder or any district or grazing association organized under prior laws as described in this section may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the commission; the only notice of such meeting which is necessary is the notice of meetings of members as required by the by-laws of such district or association. Such amended articles of incorporation and by-laws shall be submitted to the commission for approval. Upon approval, the commission shall issue its certificates of approval. Such amended articles of incorporation shall be filed by the secretary of state without charge, but shall not be filed unless accompanied by such certificate of approval. Upon the filing of such amended articles with the secretary of state and the proper county clerk or clerks, such association or district shall possess the same powers and shall be subject to the same obligations as if incorporated under this act. Any association refusing to comply with the provisions of this section or failing to so comply within the time provided in this section may be dissolved by an order of the commission. [L. '39, Ch. 208, § 18. Approved and in effect March 17, 1939.]

7364.29-19. Mizpah pumpkin creek grazing district. No territory included within the Mizpah pumpkin creek grazing district shall

be included within a state district unless such Mizpah pumpkin creek grazing district shall approve and recommend an application to such state grazing district for the inclusion of such territory. [L. '39, Ch. 208, § 19. Approved and in effect March 17, 1939.]

7364.29-20. Grazing preferences — distribution — temporary permits. When a state district is organized, grazing preferences shall be distributed in the following manner: Any member of a state district owning or controlling dependent commensurate property as heretofore defined may be given a grazing preference. If the carrying capacity of the range exceeds the reasonable needs of members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the preference. If the carrying capacity of the range exceeds the reasonable needs of members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to non-members, preferring those that have used the range for any three or any two consecutive years in the five-year period immediately preceding June 28, 1934. Such temporary permits shall be merely privileges granted from year to year and their possession shall not establish a preference. [L. '39, Ch. 208, § 20. Approved and in effect March 17, 1939.]

7364.29-21. Grazing preferences — application for. Any person entitled to grazing preferences within any state grazing district based on dependent commensurate property or commensurate property must make application one year after the passage of this act to qualify for said preference; or, in the case of state districts hereafter organized, must make application within one year after said district shall have been organized to qualify for said preference. [L. '39, Ch. 208, § 21. Approved and in effect March 17, 1939.]

7364.29-22. Grazing preferences—appurtenance to dependent commensurate property—alienation of land—non-use permits—grazing fees—revocation of preference. Grazing preferences shall run with and be appurtenant to, the dependent commensurate property upon which they are based. They shall not be subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process, or transaction, except as provided in this section or in the by-laws of a state district.

When the land to which a preference is attached shall change its control or ownership such preference shall change with the land, provided, that the person to which such con-

trol or ownership changes shall secure a non-use permit or shall pay the usual grazing fees. If such person fails to secure such non-use permit or refuses to pay such grazing fees, the preferences may be revoked by the state district. If any person controls but does not own land and does not secure a non-use permit and refuses to pay grazing fees, the state district shall notify the owner of such land by registered mail that the preference attached to such land will be revoked unless such owners shall pay the usual grazing fees to the state district within sixty (60) days from the time of receipt of such notice. The state district may revoke such preference if the owner or mortgagor does not pay such fees or secure a non-use permit.

When a preference is revoked, it shall be detached from the dependent commensurate or commensurate property to which it was formerly appurtenant. The preference shall immediately shift to the state district. The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its by-laws. [L. '39, Ch. 208, § 22. Approved and in effect March 17, 1939.]

7364.29-23. Range improvements — compensation by subsequent owners or lessees — fixing amount. Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner, upon lands leased by the state district. Such value shall be the value at the expiration date of the lease. In the event that the owner and the state district cannot agree as to such value, the state district may either remove or abandon such improvement. In the event that the subsequent lessee and the state district cannot agree as to such value, it shall be fixed by the commission. [L. '39, Ch. 208, § 23. Approved and in effect March 17, 1939.]

7364.29-24. Surplus assets of district—when permittee to receive—set-off—new member receiving grazing preference—payment required. Whenever a state district shall possess reserves and physical assets, the values of which are greater than its liabilities, and a permittee member shall lose his grazing preference, he shall be entitled to receive his proportionate share of the value of such excess from the state district, as determined by the annual accounting of the state district. The state district may set off the amount of any claim it may have against such former member.

Whenever a new member shall receive a grazing preference, he shall, as a condition of receiving such preference, pay to the state district the value of the equitable interest in

the physical assets and reserve fund which accrues to him by virtue of such membership. Such value shall be determined at the time of receiving such preference, and upon the basis of the determination of value of such physical assets and reserves made at the last annual accounting. [L. '39, Ch. 208, § 24. Approved and in effect March 17, 1939.]

7364.29-25. Dissolution of district—assets—distribution—procedure—reports. A state district may request dissolution at any time with the consent of three-fourths of its permittee members: When such consent has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or in both. Distribution shall first be made to creditors up to the amount of their claims, providing, that a distribution of any property must be with the consent of the commission. Distribution shall then be made to permittee members upon the basis of their proportionate interest in such assets, provided that a distribution of any property must be with the consent of the commission. If assets must be liquidated, the directors shall offer such assets for sale at public auction after publication of a notice of such sale once a week for two successive weeks in a newspaper of general circulation within the state district. A final report of all dissolution proceedings shall be made to the commission by the directors. Upon the approval of such report by the commission, it shall order such state district dissolved. [L. '39, Ch. 208, § 25. Approved and in effect March 17, 1939.]

7364.29-26. Grazing stock within district or crossing it — permit or privilege — necessity — violation — penalty — trespassing stock — impoundage — fences within district. (1) No person whether a member or a non-member of a state district, shall graze stock within the external boundaries of a state district, or trail stock across, upon or into any range of a state district unless he shall first obtain a grazing permit or a crossing privilege from the state district; provided, that this provision shall not require any person to obtain a grazing permit to graze upon land owned or controlled by him if the stock so grazed is restrained from grazing upon or trailing across lands controlled by the state district. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00).

(2) If any stock grazes upon lands owned or controlled by a state district without the permission of the state district, such stock may

be impounded for trespass and sold in the manner provided in section 3379 of the revised codes of Montana, 1935.

(3) Section 3378 of the revised codes of Montana, 1935, shall apply to fences within the external boundaries of a state district, whether or not such external boundaries are entirely fenced, except where such section 3378 conflicts with the provisions of this section. [L. '39, Ch. 208, § 26. Approved and in effect March 17, 1939.]

7364.29-27. Land in district not controlled by district—grazing permits to owner—regulations in use thereof—damages caused by stock grazing under permit. When any land is situated within the boundaries of a state district and is not leased or controlled by said district and not surrounded by a legal fence, any person owning or controlling such lands shall have the right to obtain a grazing permit from the state district, the size of which shall be determined by the carrying capacity of such land, full consideration being given for location of necessary stock water. The use of such permit shall be subject to all regulations by the state district. If the person owning or controlling such land declines to secure such permit, or fails to lease such land to the state district at a fair lease rental and fails to fence such land at his own expense, he shall not be entitled to recover damages, for trespass by stock grazing under permit, but the state district shall not issue a permit to use the carrying capacity of such land. Farming lands lying within the external boundaries of a state district shall be protected by the owner or lessee to the extent of a legal fence as described in subsection (1) of section 3374 of the revised codes of Montana, 1935. The state district or its members shall not be liable for damages unless such farming lands are protected by a sufficient fence as described in this section. [L. '39, Ch. 208, § 27. Approved and in effect March 17, 1939.]

7364.29-28. State grass conservation fund—fees—refund. There is hereby created a fund to be known as the state grass conservation fund, which shall consist of funds as may be appropriated by the state legislature and placed to the credit of such fund. Any funds in the state grazing fund as created by chapter 194, laws of 1935 [7364.20-7364.29], are hereby transferred to the state grass conservation fund created by this act. However, upon application filed within twelve (12) months after the passage and approval of this act by any district electing not to come under the provisions of this act the proportionate part of the fees remaining within this present state

grazing fund shall be refunded to said non-cooperating grazing district. [L. '39, Ch. 208, § 28. Approved and in effect March 17, 1939.]

7364.29-29. Fees against districts—imposition by commission—purpose—disposition—failure to pay—remedy. The state grass conservation commission shall have authority and right to impose such fees against the several state grazing districts of the state of Montana and in an amount not in excess of five cents (5c) per animal unit based upon the number of animal units per year for which the district grants permits, to defray any or all expenses created by the state grass conservation commission, and said state grass conservation commission shall from such fees and collections repay to the state treasurer of Montana any and all appropriations provided by the state of Montana for the establishment of this commission and the administration of this act when so collected. When such appropriation by the state of Montana is repaid, the balance of such funds shall be held in the state grass conservation fund, herein created, to be expended by order and direction of the state grass conservation commission for the further administration of the commission, and thereafter said commission shall be maintained by funds obtained from the livestock fees hereinbefore provided. If any state district fails or refuses to pay such fee or fees on or before the first day of May of each year, and after such district shall have been provided with a full report from the commission of all moneys collected and expended by it for its fiscal year next preceding that date, the commission shall have authority to compel and levy, collection and payment by writ of mandate or other appropriate remedy against said state district. [L. '39, Ch. 208, § 29. Approved and in effect March 17, 1939.]

7364.29-30. Wild game range—provision for—state fish and game commission—beaver doing damage—transfer. In each state district a sufficient carrying capacity of range will be reserved for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district. The Montana grass conservation commission may act in an advisory capacity to the state fish and game commission in the protection of wild-life within the boundaries of all grazing districts. The Montana grass conservation commission shall encourage the transfer of beaver from streams where they are doing damage to other streams where they are needed. [L. '39, Ch. 208, § 30. Approved and in effect March 17, 1939.]

7364.29-31. Repeals. Section 7364.7 to 7364.29 inclusive of the revised codes of Montana, 1935, are hereby repealed and all acts or parts of acts, in relation to state grazing districts, in conflict herewith, are hereby repealed. [L. '39, Ch. 208, § 32. Approved and in effect March 17, 1939.]

Section 31 is partial invalidity saving clause.

CHAPTER 95

LOCATION AND RECORD OF MINING AND MILLSITE CLAIMS

7365. Discovery—notice—marking boundaries—sinking shaft.

1939. In an action to try title to mill tailings on defendant's mining claim a judgment granting the plaintiff the right to remove the tailings in reasonable time was erroneous since the judgment resulted in giving the plaintiff an interest in the real estate itself. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

CHAPTER 97

OBLIGATION—DEFINITION AND RULES OF INTERPRETATION

7394. Obligation defined.

1938. Plaintiff, a customer at defendant store fell and was injured by tripping over an obstruction in the aisle of the store placed there by a John Doe defendant, employee of defendant store. Action removed to federal court and by them remanded to state court. It was held that a resident defendant in a non-separable controversy anchors the case in the state court; and the non-resident defendant may not remove the suit to a federal court merely because the resident defendant has not been served with process nor voluntarily appeared in the action. *Jensen v. Safeway Stores*, 24 Fed. Supp. 585. Citing *Grosso v. Butte Electric R. Co. et al.* D. C., 217 Fed. 422; *Del Fungo Giera v. Rockland Light & Power Co. et al.*, D. C., 46 Fed. (2d) 552; *Armstrong v. Kansas City Southern R. Co. et al.*, C. C., 38 Fed. 608; *Patchin v. Hunter*, C. C. 38 Fed. 51.

7395. How created and enforced.

1938. Plaintiff, a customer at defendant store fell and was injured by tripping over an obstruction in the aisle of the store placed there by a John Doe defendant, employee of defendant store. Action removed to federal court and by them remanded to state court. It was held that a resident defendant in a non-separable controversy anchors the case in the state court; and the non-resident defendant may not remove the suit to a federal court merely because the resident defendant has not been served with process nor voluntarily appeared in the action. *Jensen v. Safeway Stores*, 24 Fed. Supp. 585. Citing *Grosso v. Butte Electric R. Co. et al.* D. C., 217 Fed. 422; *Del Fungo Giera v. Rockland Light & Power Co. et al.*, D. C., 46 Fed. (2d) 552; *Armstrong v. Kansas City Southern R. Co. et al.*, C. C., 38 Fed. 608; *Patchin v. Hunter*, C. C. 38 Fed. 51.

CHAPTER 98

JOINT AND SEVERAL, CONDITIONAL AND ALTERNATIVE OBLIGATIONS

7402. Conditions precedent.

1937. ✓ Condition in an oil and gas development and production contract that it was subject to the approval of the secretary of the interior held not a condition precedent to the binding effect of the contract, where the parties and the secretary recognized it as being in effect. *Atlantic Pacific Oil Co. of Montana v. Gas Development Co.*, 105 Mont. 1, 69 P. (2d) 750, containing an elaborate discussion of conditions precedent and subsequent.

CHAPTER 100

EXTINCTION OF OBLIGATIONS BY PERFORMANCE, OFFER OF PERFORMANCE AND PREVENTION OF PERFORMANCE

7430. Application of general performance.

1938. ✓ The statutory provision that where there has been no application of payments by either debtor or creditor the earliest payment shall be applied to the oldest obligation applies only where both obligations are due from the same debtor to the creditor, and has no application to payments by another debtor of the same creditor on its own indebtedness. In this case payment made by a corporation organized by the original debtor and others was shown to have been on its own indebtedness later contracted, and not on the prior indebtedness of the original debtor, as he claimed, nor did it consent to such application of the payment. Furthermore the jury was justified, on the evidence, in finding that the creditor actually applied the corporation's payment on its obligation. *Ingman v. Hewitt*, 107 Mont. 267, 86 P. (2d) 653.

7434. To whom to be made.

1936. ✓ In the absence of express agreement as to place of payment and where the creditor resides at a place different within the state from that of the debtor, the place of residence of the creditor becomes the place of performance, hence the place to trial in an action upon a contract as between individuals and corporations. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

1936. ✓ Since a creditor of a city must present his warrant for the payment thereof to the city treasurer the place to sue the city is in the county in which the city is located. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

7435. Where offer may be made.

1936. ✓ In the absence of express agreement as to place of payment and where the creditor resides at a place different within the state from that of the debtor, the place of residence of the creditor becomes the place of performance, hence the place to trial in an action upon a contract as between individuals and corporations. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

1936. ✓ Since a creditor of a city must present his warrant for the payment thereof to the city treasurer the place to sue the city is in the county in which the city is located. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

7446. Extinction of pecuniary obligation.

1939. ✓ The defendant did not offer to pay the amount which he admitted to be lienable so as to stop the running of interest. It was therefore proper for the trial court to allow interest on the amount of the lien. *Federal Land Bank of Spokane v. Green et al.*, Mont., 90 P. (2d) 489.

7450. Effect of offer on interest and accessories of obligation.

1939. ✓ The defendant did not offer to pay the amount which he admitted to be lienable so as to stop the running of interest. It was therefore proper for the trial court to allow interest on the amount of the lien. *Federal Land Bank of Spokane v. Green et al.*, Mont., 90 P. (2d) 489.

7452. What excuses performance, etc.

1936. ✓ Damage caused by a flood held not due to lack of openings in the defendant's railroad embankment but to an act of God for which the defendant was not responsible. *Wibaux Realty Co. v. Northern Pac. Ry. Co.*, 101 Mont. 126, 54 P. (2d) 1175.

CHAPTER 101

EXTINCTION OF OBLIGATIONS BY ACCORD AND SATISFACTION, NOVATION, AND RELEASE

7457. Effect of accord.

1936. ✓ Evidence of personal transaction with corporation secretary regarding delivery of stock in lieu of payment of wages held not to justify instruction as to its effect. *Davis v. Sullivan*, 103 Mont. 452, 62 P. (2d) 1292.

1936. ✓ If it is intended that a promise for the future shall constitute an accord, and is so accepted in lieu of the original obligation, it is a good consideration and constitutes satisfaction. This is an exception to the above section. *Davis v. Sullivan Gold Mining Co.*, 103 Mont. 452, 62 P. (2d) 1292.

7460. Novation defined.

1936. ✓ Evidence of personal transaction with corporation secretary regarding delivery of stock in lieu of payment of wages held not to justify instruction as to its effect. *Davis v. Sullivan*, 103 Mont. 452, 62 P. (2d) 1292.

CHAPTER 102

DEFINITION OF A CONTRACT

7467. Contract defined.

1936. ✓ The words "for all contracts, debts, and engagements," as used in section 6014.25, do not comprehend every kind of liability, and do not include tort liabilities, but only those obligations voluntarily assumed. *Capital National Bank of St. Paul v. Bartley*, 101 Mont. 591, 56 P. (2d) 728.

CHAPTER 104

CONSENT

7475. Apparent consent—when not free.

1938.✓ Relief cannot be given under section 9187 for a mistake of law in view of sections 7475, 7485-7487, 8776. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

1938.✓ The belief of counsel that a mortgage renewal affidavit prevented the debt from being outlawed by limitations was a mistake of law and could not be relieved under section 9187. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

7480. Actual fraud, acts constituting.

1937.✓ A grantor of land and lease given under agreement by grantee to develop mineral resources of land, could not quiet title to land on ground that agreement was not carried out, in absence of allegations and proof that intent not to fulfill agreement existed in grantee's mind when the agreement was made. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

7485. Mistake of fact.

1938.✓ Cited in *Calkins v. Smith*, 106 Mont. 453, 78 P. (2d) 74, stating that reimbursement for mistaken payments requires that the party for whose benefit the obligation was paid was legally obliged to pay the same, or that he retained and enjoyed the benefits thereof, thereby ratifying the obligation as his own, and holding that a complaint in an action to recover taxes the complaint failed to properly allege defendants retention and enjoyment of benefits so as to amount to a ratification.

1938.✓ Relief cannot be given under section 9187 for a mistake of law in view of sections 7475, 7485-7487, 8776. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

1938.✓ The belief of counsel that a mortgage renewal affidavit prevented the debt from being outlawed by limitations was a mistake of law and could not be relieved under section 9187. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

7486. Mistake of law.

1938.✓ Cited in *Calkins v. Smith*, 106 Mont. 453, 78 P. (2d) 74.

7494. Revocation of proposal.

1937.✓ A landowner's offer to lease property may be revoked before the proposed lessee has communicated his acceptance to the landowner. *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586.

7497. Assumption of obligation by acceptance of benefits.

1938.✓ Cited in *Cook-Reynolds Co. v. Beyer*, 107 Mont. 1, 79 P. (2d) 658, denying reformation of a written instrument concerning real estate commissions on the ground of estoppel.

CHAPTER 105

OBJECT

7501. When contract wholly void.

1939.✓ The rule set forth in 2 Rev. Codes of Mont. 1921, Par. 7501, departs from the common law rule, and therefore Par. 10704 is not applicable. Section

7501 declares a contract, which in the nature of things is impossible of performance, to be void. It makes no exceptions for a case where the promisor knew, or had reason to know of the impossibility. *Smith Engineering Co. v. Rice*, 102 Fed. (2d) 492.

CHAPTER 106

CONSIDERATION

7503. Good consideration, what constitutes.

1937.✓ A promissory note given by a lessee for a lease, although returned after a year, was a good and valuable consideration for the lease, and made the lessee a purchaser for value. *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586.

1937.✓ Evidence, in an action to quiet title under an "unless" gas and oil lease, held to justify a finding for the plaintiff on the ground that the lease relied on by him was valid although a lease relied on by the defendant was known by the plaintiff's assignor to have been delivered in escrow and suit begun by defendant to compel delivery, before execution of the assignor's lease as against the defendants contention that the lease to the plaintiff's assignor was a mere sham or pretext. *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586.

7512. Written instrument presumptive evidence of consideration.

1937.✓ The presumption of lack of consideration under section 7895 does not apply to a transaction creating a trust relation, but only to a transaction after the trust relation has been established. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

1937.✓ The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it, and the presumption of consideration, if uncontradicted, is satisfactory. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

1937.✓ Grantor's deed to common-law trust given in consideration of delivery to him of certificate of interest in the trust was held not unenforceable for failure of consideration in absence of proof by him that the tendered certificate was without value. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

7513. Burden of proof to invalidate sufficient consideration.

1937. The presumption of lack of consideration under section 7895 does not apply to a transaction creating a trust relation, but only to a transaction after the trust relation has been established. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

1937.✓ The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it, and the presumption of consideration, if uncontradicted, is satisfactory. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

1937.✓ Grantor's deed to common-law trust given in consideration of delivery to him of certificate of interest in the trust was held not unenforceable for failure of consideration in absence of proof by him that the tendered certificate was without value. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

CHAPTER 107

MANNER OF CREATING CONTRACTS — ORAL AND WRITTEN CONTRACTS

7519. What contracts must be in writing.

1939. ✓ The policy provided that notice of a change of beneficiary be in writing. This does not require that the authority of an agent, who, in writing, requests such a change, must be in writing. *Conlon v. Northern Life Ins. Co.*, Mont., 92 P. (2d) 284.

1937. ✓ An action against a corporation for the installation and maintenance of electric neon signs, running into several hundred dollars and based on a written contract signed by a director without written authority could not be maintained, such contract not being an ordinary one nor one which might ordinarily arise in the conduct of the business of the corporation, which was the operation of a tourist camp, the only authority of the director being to run the camp and sell supplies. *Electrical Products Consolidated v. El Campo, Inc.*, 105 Mont. 386, 73 P. (2d) 199.

1937. ✓ Where, under an oral contract to convey land, the purchaser wrote a letter to the owner setting forth the material facts, acknowledging that the deed and check for the payment of the purchase price were in the hands of an escrow holder, and that they had agreed to purchase the land, the contract was taken out of the provisions of the statute of frauds, as such letter was a writing signed by the party to be charged, under the statute. *Connor v. Helvik*, 105 Mont. 437, 73 P. (2d) 541.

1937. An oral contract for the conveyance of land did not fall within the statutes of frauds where, pending the fulfillment of an agreement to deliver a release of a mortgage, the purchasers took possession of the land, harvested the crops thereon, grazed their livestock on the grass, and paid half the taxes due for the current year, such acts constituting part performance of the contract. *Connor v. Helvik*, 105 Mont. 437, 73 P. (2d) 541.

1936. ✓ A contract employing a broker or agent to induce others to enter into an option or lease, or a lease and option held not to be required to be in writing, since the holder of an option acquires nothing but a personal privilege to purchase, which does not ripen into an interest in the land until he chooses to exercise the privilege, and a lease is not "an interest in real estate." *O'Neill v. Wall*, 103 Mont. 388, 62 P. (2d) 672, holding oral agreement to that effect did not preclude broker from recovering commission.

CHAPTER 108

INTERPRETATION

7527. Contracts—how to be interpreted.

1939. It is an established principle in the construction of fire insurance policies, as well as other contracts that the words of the agreement are to be applied to the subject matter about which the parties are contracting at the time, the presumption being that such matter is in the minds of the parties at the time of their agreement. *Rice Oil Co. v. Atlas Assur. Co.*, 102 Fed. (2d) 561.

1936. ✓ Use of the word "merged" in second joint adventure contract for the running and handling of sheep held not to revoke a prior contract, but to make the subsequent contract supplementary to the first. *Snider v. Carmichael*, 102 Mont. 387, 58 P. (2d) 1004.

1936. ✓ Where contracts are ambiguous as to the intent of the parties, extraneous evidence as to intent is admissible. *Snider v. Carmichael*, 102 Mont. 387, 58 P. (2d) 1004, applying rule to joint adventure contract for the running and handling of sheep. ✓

1936. ✓ Contracts of insurance are to be construed as other contracts are construed. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

7532. Effect to be given to every part of contract.

1936. ✓ Cited in *Snider v. Carmichael*, 102 Mont. 387, 58 P. (2d) 1004.

7533. Several contracts — when taken together.

1937. ✓ A deed to mineral land, providing for the effect thereof in case an accompanying lease should be cancelled, held not to become inoperative on such cancellation, despite the provision of section 7533 that they were to be taken together. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

1937. ✓ Section 7533 construed to mean that when contracts come within its provisions they are to be construed together. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

7549. Time — when of essence.

1938. ✓ No set form of words is necessary to make time the essence of a contract, but it is sufficient if the intent be clear to make it the essence, *Johnson v. Metropolitan Life Ins. Co.*, 107 Mont. 133, 83 P. (2d) 922, holding that time was properly made the essence of payment of premiums on a life insurance policy by words therein used.

CHAPTER 109

UNLAWFUL CONTRACTS

7553. What is unlawful.

1939. ✓ "If an obligation be dependent on another obligation (and, by parity of reasoning, upon the legal existence of another instrument), and the latter be discharged, or become void, the former is also discharged." Such is the law in Montana, where it is held that the effect of a bond is to extend the obligations of the contract to the surety. *Smith Engineering Co. v. Rice*, 102 Fed. (2d) 492. Citing, *Miller v. Stewart*, 22 U. S. 680, 706, 9 Wheat. 680, 706, 6 L. Ed. 189. *Gary Hay & Grain Co. v. Carlson*, 79 Mont. 111, 225 Pac. 722, also see 2 Rev. Codes of Mont. 1921, Par. 7553, 8184, 8185, 8202.

7558. Restraints upon legal proceedings.

1936. ✓ Applied in *Cacic v. Slovenska Narodna Podporna Jednota (Slovenic Nat. Ben. Soc.)*, 102 Mont. 438, 59 P. (2d) 910.

7559. Contract in restraint of trade void.

1937. A deed to mineral land, providing for the effect thereof in case an accompanying lease should be cancelled, held not to become inoperative on such cancellation, despite the provision of section 7533 that they were to be taken together. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

CHAPTER 111**OBLIGATIONS IMPOSED BY LAW****7573. Abstinence from injury.**

1938. Plaintiff, a customer at defendant store fell and was injured by tripping over an obstruction in the aisle of the store placed there by a John Doe defendant, employee of defendant store. Action removed to federal court and by them remanded to state court. It was held that a resident defendant in a non-separable controversy anchors the case in the state court; and the non-resident defendant may not remove the suit to a federal court merely because the resident defendant has not been served with process nor voluntarily appeared in the action. *Jensen v. Safeway Stores*, 24 Fed. Supp. 585. Citing *Grosso v. Butte Electric R. Co. et al.* D. C., 217 Fed. 422; *Del Fungo Giera v. Rockland Light & Power Co. et al.*, D. C., 46 Fed. (2d) 552; *Armstrong v. Kansas City Southern R. Co. et al.*, C. C., 38 Fed. 608; *Patchin v. Hunter*, C. C. 38 Fed. 51.

7579. Responsibility for wilful acts, negligence, etc.

1938. Plaintiff, a customer at defendant store fell and was injured by tripping over an obstruction in the aisle of the store placed there by a John Doe defendant, employee of defendant store. Action removed to federal court and by them remanded to state court. It was held that a resident defendant in a non-separable controversy anchors the case in the state court; and the non-resident defendant may not remove the suit to a federal court merely because the resident defendant has not been served with process nor voluntarily appeared in the action. *Jensen v. Safeway Stores*, 24 Fed. Supp. 585. Citing *Grosso v. Butte Electric R. Co. et al.* D. C., 217 Fed. 422; *Del Fungo Giera v. Rockland Light & Power Co. et al.*, D. C., 46 Fed. (2d) 552; *Armstrong v. Kansas City Southern R. Co. et al.*, C. C., 38 Fed. 608; *Patchin v. Hunter*, C. C. 38 Fed. 51.

CHAPTER 112A**FAIR TRADE ACT—RESALE OF TRADE-MARKED OR BRANDED ARTICLES**

Section

- 7590.1. Fair trade act—trade-marked commodities—resale price—right of seller to fix—contracts—validity—definitions.
 7590.2. Contracts—valid provisions—resale—minimum price—wholesaler—retailer.
 7590.3. Violations of minimum resale price provisions—what constitutes.
 7590.4. Minimum resale price—who may establish.
 7590.5. When minimum price not binding—closing out stock—removal of trade-mark from goods—damaged goods—sale by officer.

Section

- 7590.6. Knowledge of contract—violation—right of action.
 7590.7. Contracts exempt from act.
 7590.8. Partial invalidity saving clause.
 7590.9. Short title of act.

7590.1. Fair trade act—trade-marked commodities—resale price—right of seller to fix—contracts—validity—definitions. The following terms, as used in this act, are hereby defined as follows:

(a) “Commodity” means any subject of commerce.

(b) “Producer” means any grower, baker, maker, manufacturer, bottler, packer, converter, processor or publisher.

(c) “Wholesaler” means any person selling a commodity other than a producer or retailer.

(d) “Retailer” means any person selling a commodity to consumers for use.

(e) “Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust or any unincorporated organization. [L. '37, Ch. 42, § 1. Approved and in effect February 23, 1937.]

7590.2. Contracts—valid provisions—resale—minimum price—wholesaler—retailer. No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others shall be deemed in violation of any law of the state of Montana by reason of any of the following provisions which may be contained in such contract:

(a). That the buyer will not resell such commodity at less than the minimum price stipulated by the seller.

(b). That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller.

(c). That the seller will not sell such commodity:

1. To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will, in turn, agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other

wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

2. To any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price. [L. '37, Ch. 42, § 2. Approved and in effect February 23, 1937.]

7590.3. Violations of minimum resale price provisions—what constitutes. For the purpose of preventing evasion of the resale price restrictions imposed in respect of any commodity by any contract entered into pursuant to the provisions of this act (except to the extent authorized by the said contract):

(a). The offering or giving of any article of value in connection with the sale of such commodity;

(b). The offering or the making of any concession of any kind whatsoever (whether by the giving of coupons or otherwise) in connection with any such sale; or

(c). The sale or offering for sale of such commodity in combination with any other commodity, shall be deemed a violation of such resale price restriction, for which the remedies prescribed by section 6 [7590.6] of this act shall be available. [L. '37, Ch. 42, § 3. Approved and in effect February 23, 1937.]

7590.4. Minimum resale price — who may establish. No minimum resale price shall be established for any commodity, under any contract entered into pursuant to the provisions of this act, by any person other than the owner of the trade-mark, brand or name used in connection with such commodity or by a distributor specifically authorized to establish said price by the owner of such trade-mark, brand or name used in connection with such commodity or by a distributor specifically authorized to establish said price by the owner of such trade-mark, brand or name. [L. '37, Ch. 42, § 4. Approved and in effect February 23, 1937.]

7590.5. When minimum price not binding—closing out stock—removal of trade-mark from goods—damaged goods—sale by officer. No contract containing any of the provisions enumerated in section 2 [7590.2] of this act shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases:

(a). In closing out the owner's stock for the bona fide purpose of discontinuing dealing in any such commodity and plain notice of the

fact is given to the public; provided the owner of such stock shall give to the producer or distributor of such commodity prompt and reasonable notice in writing of his intention to close out said stock, and an opportunity to purchase such stock at the original invoice price;

(b). When the trade-mark, brand or name is removed or wholly obliterated from the commodity and is not used or directly or indirectly referred to in the advertisement or sale thereof;

(c). When the goods are altered, second-hand, damaged or deteriorated and plain notice of the fact is given to the public in the advertisement and sale thereof, such notice to be conspicuously displayed in all advertisements and to be affixed to the commodity;

(d). By any officer acting under an order of court. [L. '37, Ch. 42, § 5. Approved and in effect February 23, 1937.]

7590.6. Knowledge of contract—violation—right of action. Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the stipulated price in any contract entered into pursuant to the provisions of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby. [L. '37, Ch. 42, § 6. Approved and in effect February 23, 1937.]

7590.7. Contracts exempt from act. This act shall not apply to any contract or agreement between or among producers or distributors or between or among wholesalers or between or among retailers as to sale or resale prices. [L. '37, Ch. 42, § 7. Approved and in effect February 23, 1937.]

7590.8. Partial invalidity saving clause. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provisions to other persons or circumstances, shall not be affected thereby. [L. '37, Ch. 42, § 8. Approved and in effect February 23, 1937.]

7590.9. Short title of act. This act may be known and cited as the "fair trade act." [L. '37, Ch. 42, § 10. Approved and in effect February 23, 1937.]

Section 9 repeals conflicting laws.

CHAPTER 113

FORM OF CONTRACT—FILING OF CONDITIONAL SALES CONTRACTS

7594. Filing contracts for sale of personal property.

1937. ✓ Assignee of seller of truck on conditional sale contract held not liable for injuries caused by truck when driven by purchaser. *Coombes v. Letcher*, 104 Mont. 371, 66 P. (2d) 769.

CHAPTER 119

DEPOSIT FOR KEEPING—GRATUITIOUS DEPOSIT

7656. Gratuitous deposit defined.

1936. ✓ A bank acting as bailee of bonds without direct compensation therefor, is not made a bailee for hire because it may receive some indirect benefit from the bailment by way of increased business coming to it because of the accommodation, where it does not seek the creation of the bailment as a means of promoting its business. *Boyd v. Harrison State Bank*, 102 Mont. 94, 56 P. (2d) 724.

1936. ✓ A bailee is not absolved from liability merely because he takes the same care of the bailor's property as he does of his own. *Boyd v. Harrison State Bank*, 102 Mont. 94, 56 P. (2d) 724.

7658. Degree of care required of gratuitous depositary.

1936. ✓ The care usually and generally deemed necessary in the community for the security of similar property, under like conditions, is required of the gratuitous bailee, but nothing more. Gross negligence, as applied to a gratuitous bailee, is nothing more than a failure to bestow the care which the property in its situation demands. *Boyd v. Harrison State Bank*, 102 Mont. 94, 56 P. (2d) 724.

1936. ✓ Bank, as gratuitous bailee of its customers, held liable for theft of bonds where it knew that robbery of bank would be attempted, and in endeavoring to apprehend the robbers, left its vaults unlocked and surrounded the bank with armed peace officers. *Boyd v. Harrison State Bank*, 102 Mont. 94, 56 P. (2d) 724.

1936. ✓ A bailee is not absolved from liability merely because he takes the same care of the bailor's property as he does of his own. *Boyd v. Harrison State Bank*, 102 Mont. 94, 56 P. (2d) 724.

CHAPTER 124

LOAN FOR USE—LOAN FOR EXCHANGE—LOAN FOR MONEY

7723. Interest defined.

1938. The mere fact that the lender had to borrow the money which he loaned to the borrower furnished no justification for receiving usurious interest. *Bowden v. Gabel*, 105 Mont. 477, 76 P. (2d) 334.

1938. The fact that the lender borrowed part of the money loaned was not a service rendered the borrower which would prevent the interest charged from being usurious, nor was such proceeding a loaning of the lender's credit which would have the same effect. *Bowden v. Gabel*, 105 Mont. 477, 76 P. (2d) 334.

1938. A contract or obligation for the payment of a sum of money larger than that actually lent to or due from the debtor is usurious if the difference between the face amount of the obligation and the sum actually received or owed by the debtor, when added to the interest, if any, stipulated in the contract, exceeds the return permitted by law upon the sum actually received or due. *Bowden v. Gabel*, 105 Mont. 477, 76 P. (2d) 334.

1938. A lender may properly exact from a borrower, in addition to interest at the highest lawful rate upon the money loaned, reasonable fees or compensation for services rendered, or reimbursement of expenses incurred, in good faith, by the lender or his agent, in connection with the loan, without thereby rendering the transaction usurious, even though the services rendered or acts done be such as would ordinarily be performed by the lender in his own interest. *Bowden v. Gabel*, 105 Mont. 477, 76 P. (2d) 334.

7725. Legal interest.

1935. ✓ Where an administrator made an unauthorized sale of sheep on credit without security he was charged with the debt and interest at 6 per cent, the legal rate, from the date it became due. *In re Astibia's Estate*, 100 Mont. 224, 46 P. (2d) 712.

7726. Same—any rate not exceeding ten per cent. allowed by agreement.

1938. ✓ The fact that the lender borrowed part of the money loaned was not a service rendered the borrower which would prevent the interest charged from being usurious, nor was such proceeding a loaning of the lender's credit which would have the same effect. *Bowden v. Gabel*, 105 Mont. 477, 76 P. (2d) 334.

1938. ✓ A contract or obligation for the payment of a sum of money larger than that actually lent to or due from the debtor is usurious if the difference between the face amount of the obligation and the sum actually received or owed by the debtor, when added to the interest, if any, stipulated in the contract, exceeds the return permitted by law upon the sum actually received or due. *Bowden v. Gabel*, 105 Mont. 477, 76 P. (2d) 334.

1938. A lender may properly exact from a borrower, in addition to interest at the highest lawful rate upon the money loaned, reasonable fees or compensation for services rendered, or reimbursement of expenses incurred, in good faith, by the lender or his agent, in connection with the loan, without thereby rendering the transaction usurious, even though the services rendered or acts done be such as would ordinarily be performed by the lender in his own interest. *Bowden v. Gabel*, 105 Mont. 477, 76 P. (2d) 334.

7727. Penalty for usury—action to recover excessive interest.

1938. ✓ The two-year limitation within which the action must be brought to recover interest paid, under the second part of section 7727, has no application to relief under the first part of that section. *Bowden v. Gabel*, 105 Mont. 477, 76 P. (2d) 334.

1938. ✓ No demand on the lender is necessary to obtain the relief provided for in the first paragraph of section 7727. The complaint to obtain this relief was held sufficient in *Bowden v. Gabel*, 105 Mont. 477, 76 P. (2d) 334.

1938. ✓ In an action to recover usurious interest it was held that the lender could not object to the trial court's action in deducting the difference between the face of the note and the amount loaned from the note, and ordering that the note, as reduced, should bear no interest. *Bowden v. Gabel*, 105 Mont. 477, 76 P. (2d) 334.

1938. ✓ The voluntary taking of more than the legal rate in of interest constitutes usury. Usurious intent is implied if excessive interest is intentionally taken, and it is of no consequence that there was no specific intent knowingly to violate the law. *Bowden v. Gabel*, 105 Mont. 477, 76 P. (2d) 334.

1938. ✓ The mere fact that the lender had to borrow the money which he loaned to the borrower furnished no justification for receiving usurious interest. *Bowden v. Gabel*, 105 Mont. 477, 76 P. (2d) 334.

CHAPTER 125

HIRING IN GENERAL

7740. Apportionment of hire.

1938. ✓ Appellant leased Indian lands from the United States on a royalty basis. Certain advance royalty payments became due prior to the date of cancellation by the United States of the lease for non-payment of rents and royalties. Held, that the state statute providing for proportionment of hire due was invalid because of its repugnancy to the paramount act of congress in regard to the leasing of Indian lands. *Montana Eastern Limited v. United States*, 95 Fed. (2d) 897. Citing, *Sperry Oil and Gas Co. v. Chisholm*, 264 U. S. 488, 44 S. Ct. 472, 374, 68 L. Ed. 803.

CHAPTER 142

COMMON CARRIERS OF PROPERTY

7867/ Liability of inland carriers for loss.

1936. ✓ Damage caused by a flood held not due to lack of openings in the defendant's railroad embankment but to an act of God for which the defendant was not responsible. *Wibaux Realty Co. v. Northern Pac. Ry. Co.*, 101 Mont. 126, 54 P. (2d) 1175.

CHAPTER 144

TRUSTS IN GENERAL—NATURE AND CREATION

7879/ Voluntary trust defined.

1936. ✓ Where money was given to bank in trust to pay interest to other trustees for beneficiary two trusts were created—one for principal sum and one for interest—by trust memorandum. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

7883. For what purpose a trust may be created.

1938. ✓ A plaintiff who took assignments of causes of action and commenced action in his individual capacity and later had himself made trustee for such creditors and amended his complaint so as to represent himself as suing in the capacity as trustee, held not authorized to maintain the action where his real status had not changed to that of the real party in interest. *Streetbeck v. Benson*, 107 Mont. 110, 80 P. (2d) 861.

7884. Voluntary trust—how created as to trustor.

1937. ✓ Under section 7884 a voluntary trust of property is created where the description of the property is contained in the conveyance of the property in trust although not contained in the declaration of trust, *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811, holding that sections 7884, 6787, 6784, and 6783, must be construed together.

1936. ✓ Where money was given to bank in trust to pay interest to other trustees for beneficiary two trusts were created—one for principal sum and one for interest—by trust memorandum. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

7887. Involuntary trust resulting from fraud, etc.

1939. ✓ A dummy director in a mining corporation who located mining claims adjoining the corporation property, and so situated as to be absolutely essential to the proper conduct of the company's mining operations was held to hold such claims in trust for the corporation. *Golden Rod Mining Co. v. Bukvick*, Mont., 92 P. (2d) 316.

1939. ✓ A dummy director who never attends meetings and is never consulted on company business, may not have the duty to act for the corporation, but he has the duty not to act against it. *Golden Rod Mining Co. v. Bukvick*, Mont., 92 P. (2d) 316.

CHAPTER 145

TRUSTS IN GENERAL—OBLIGATIONS OF TRUSTEES AND OF THIRD PERSONS SALE, MORTGAGE OR LEASE OF TRUST PROPERTY

7895. Presumption against trustees.

1937. ✓ The presumption of lack of consideration under section 7895 does not apply to a transaction creating a trust relation, but only to a transaction after the trust relation has been established. *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

CHAPTER 148

TRUSTS FOR THE BENEFIT OF THIRD PERSONS—TERMINATION AND SUCCESSION

7925. Vacant trusteeship filled by court.

1936. ✓ Where a sum of money was deposited in a bank with direction to pay the interest over to trustees for the use of others, the bank was held

a trustee of the deposit and the trustees only trustees of the interest. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585, holding, also, that the bank's trust was not terminated by the bank's failure, and that the fund should be paid over to such trustee as the court should appoint, as a preferred claim in liquidation of the bank. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

CHAPTER 149

DEFINITION OF AGENCY — AUTHORITY OF AGENTS

7930. Agents, general or special.

1936. ✓ All persons dealing with a special agent are bound to ascertain the scope of the agent's authority and if they do not they deal with him at their peril. This rule applies, also, to agents who are employed for a single transaction. *Barrett v. McHattie*, 102 Mont. 473, 59 P. (2d) 794, applying rule to a livestock broker authorized to buy a limited number of lambs.

1936. ✓ In an action by a ranch owner for breach of a contract to purchase lambs, entered into by a livestock broker as agent for the buyers, evidence as to whether the broker exceeded his authority held properly submitted to the jury, although the defendant buyers did not plead broker's lack of authority to make the purchase. *Barrett v. McHattie*, 102 Mont. 473, 59 P. (2d) 794.

7931. Agency, actual or ostensible.

1937. ✓ Agency may be implied from conduct and from all the facts and circumstances in the case, and may be shown by circumstantial evidence; also ratification may be implied from the acts and conduct of the alleged principal, as where he proceeds, with knowledge of the facts, to perform the obligations which it imposes. *Freeman v. Withers*, 104 Mont. 166, 65 P. (2d) 601, stating that the rule is particularly applicable where it appears that the principal has repeatedly recognized and approved similar acts done by the agent, or where his conduct is inconsistent with any other intention.

7933. Ostensible agency.

1937. ✓ Person collecting rents for a building for, and with the acquiescence of the owner, held an ostensible agent for the latter so as to bind her for a mechanic's lien for repairs. *Doney v. Ellison*, 103 Mont. 591, 64 P. (2d) 348.

7937. Creation of agency.

1937. ✓ Agency may be implied from conduct and from all the facts and circumstances in the case, and may be shown by circumstantial evidence; also ratification may be implied from the acts and conduct of the alleged principal, as where he proceeds, with knowledge of the facts, to perform the obligations which it imposes. *Freeman v. Withers*, 104 Mont. 166, 65 P. (2d) 601, stating that the rule is particularly applicable where it appears that the principal has repeatedly recognized and approved similar acts done by the agent, or where his conduct is inconsistent with any other intention.

7939. Form of authority.

1937. ✓ An action against a corporation for the installation and maintenance of electric neon signs, running into several hundred dollars and based on a written contract signed by a director without written authority could not be maintained, such contract not being an ordinary one nor one which might ordinarily arise in the conduct of the business of the corporation, which was the operation of a tourist camp, the only authority of the director being to run the camp and sell supplies. *Electrical Products Consolidated v. El Campo, Inc.*, 105 Mont. 386, 73 P. (2d) 199.

7945. Measure of agent's authority.

1937. ✓ Person collecting rents for a building for, and with the acquiescence of the owner, held an ostensible agent for the latter so as to bind her for a mechanic's lien for repairs. *Doney v. Ellison*, 103 Mont. 591, 64 P. (2d) 348.

CHAPTER 150

MUTUAL OBLIGATIONS BETWEEN PRINCIPALS, AGENTS AND THIRD PERSONS

7965. Principal's responsibility for agent's negligence or omission.

1938. ✓ Plaintiff, a customer at defendant store fell and was injured by tripping over an obstruction in the aisle of the store placed there by a John Doe defendant, employee of defendant store. Action removed to federal court and by them remanded to state court. It was held that a resident defendant in a non-separable controversy anchors the case in the state court; and the non-resident defendant may not remove the suit to a federal court merely because the resident defendant has not been served with process nor voluntarily appeared in the action. *Jensen v. Safeway Stores*, 24 Fed. Supp. 585. Citing *Grosso v. Butte Electric R. Co. et al.* D. C., 217 Fed. 422; *Del Fungo Giera v. Rockland Light & Power Co. et al.*, D. C., 46 Fed. (2d) 552; *Armstrong v. Kansas City Southern R. Co. et al.*, C. C., 38 Fed. 608; *Patchin v. Hunter*, C. C. 38 Fed. 51.

CHAPTER 154

PARTNERSHIPS IN GENERAL—PARTNERSHIP PROPERTY AND MUTUAL OBLIGATIONS OF PARTNERS

7989. Partners trustees for each other.

1937. ✓ Where partner allowed an employee of the partnership to drive the partner's personal automobile on return trip after getting some property leased by the partnership, and the employee drove the machine into a tree, killing two guests invited by the partner, the partnership was liable for the gross negligence of the driver, although the evidence of the negligence was almost entirely circumstantial. *Doheny v. Coverdale*, 104 Mont. 534, 68 P. (2d) 142.

CHAPTER 156

GENERAL PARTNERSHIP — POWERS, OBLIGATIONS, AND LIABILITIES OF PARTNERS

7997. ✓ Authority of individual partner.

1937. Where partner allowed an employee of the partnership to drive the partner's personal automobile on return trip after getting some property leased by the partnership, and the employee drove the machine into a tree, killing two guests invited by the partner, the partnership was liable for the gross negligence of the driver, although the evidence of the negligence was almost entirely circumstantial. *Doheny v. Coverdale*, 104 Mont. 534, 68 P. (2d) 142.

CHAPTER 162

MINING PARTNERSHIPS

8050. When a mining partnership exists.

1939. ✓ A mining partnership differs in many respects from an ordinary or trading partnership, it exists without any written agreement when two or more persons who own or acquire a mining claim for the purpose of working it and extracting minerals, actually engage in working the same: the first requirement is that the participants own shares or interests in a mining claim, in praesenti, the second is that those owning an interest, must own or acquire it for the purpose of working it and extracting minerals, the third, is that minerals be actually extracted from the jointly owned claim. A bond and lease or a lease is sufficient to form the basis of such a partnership. *Meister v. Farrow et al.*; *Cochise Rock Drill Mfg. Co. v. Groff et al.*, Mont., 92 P. (2d) 753.

8051. Express agreement not necessary to constitute.

1939. ✓ A mining partnership differs in many respects from an ordinary or trading partnership, it exists without any written agreement when two or more persons who own or acquire a mining claim for the purpose of working it and extracting minerals, actually engage in working the same: the first requirement is that the participants own shares or interests in a mining claim, in praesenti, the second is that those owning an interest, must own or acquire it for the purpose of working it and extracting minerals, the third, is that minerals be actually extracted from the jointly owned claim. A bond and lease or a lease is sufficient to form the basis of such a partnership. *Meister v. Farrow et al.*; *Cochise Rock Drill Mfg. Co. v. Groff et al.*, Mont., 92 P. (2d) 753.

8052. Profits and losses — how shared.

1939. ✓ A mining partnership differs in many respects from an ordinary or trading partnership, it exists without any written agreement when two or more persons who own or acquire a mining claim for the purpose of working it and extracting minerals, actually engage in working the same: the first requirement is that the participants own shares or interests in a mining claim, in praesenti, the second is that those owning an interest, must own or acquire it for the purpose of working it and extracting minerals, the third, is that minerals be

actually extracted from the jointly owned claim. A bond and lease or a lease is sufficient to form the basis of such a partnership. *Meister v. Farrow et al.*; *Cochise Rock Drill Mfg. Co. v. Groff et al.*, Mont., 92 P. (2d) 753.

8054. Mine — partnership property.

1939. ✓ A mining partnership differs in many respects from an ordinary or trading partnership, it exists without any written agreement when two or more persons who own or acquire a mining claim for the purpose of working it and extracting minerals, actually engage in working the same: the first requirement is that the participants own shares or interests in a mining claim, in praesenti, the second is that those owning an interest, must own or acquire it for the purpose of working it and extracting minerals, the third, is that minerals be actually extracted from the jointly owned claim. A bond and lease or a lease is sufficient to form the basis of such a partnership. *Meister v. Farrow et al.*; *Cochise Rock Drill Mfg. Co. v. Groff et al.*, Mont., 92 P. (2d) 753.

8055. Partnership not dissolved by sale of interest.

1939. ✓ A mining partnership differs in many respects from an ordinary or trading partnership, it exists without any written agreement when two or more persons who own or acquire a mining claim for the purpose of working it and extracting minerals, actually engage in working the same: the first requirement is that the participants own shares or interests in a mining claim, in praesenti, the second is that those owning an interest, must own or acquire it for the purpose of working it and extracting minerals, the third, is that minerals be actually extracted from the jointly owned claim. A bond and lease or a lease is sufficient to form the basis of such a partnership. *Meister v. Farrow et al.*; *Cochise Rock Drill Mfg. Co. v. Groff et al.*, Mont., 92 P. (2d) 753.

8059. Owners of majority of shares govern.

1939. ✓ A mining partnership differs in many respects from an ordinary or trading partnership, it exists without any written agreement when two or more persons who own or acquire a mining claim for the purpose of working it and extracting minerals, actually engage in working the same: the first requirement is that the participants own shares or interests in a mining claim, in praesenti, the second is that those owning an interest, must own or acquire it for the purpose of working it and extracting minerals, the third, is that minerals be actually extracted from the jointly owned claim. A bond and lease or a lease is sufficient to form the basis of such a partnership. *Meister v. Farrow et al.*; *Cochise Rock Drill Mfg. Co. v. Groff et al.*, Mont., 92 P. (2d) 753.

CHAPTER 164

PARTIES — INSURABLE INTEREST

8070. Insurable interest defined.

1939. ✓ One who has an interest in property such that loss would accrue to him by its destruction or benefit by its preservation has an insurable interest therein. *Rice Oil Co. v. Atlas Assur. Co.*, 102 Fed. (2d) 561.
1936. An agent holding the bare legal title to prop-

erty purchased for his principal has no insurable interest therein. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

1936. A principal, for whom his agent purchased property and took title in his own name, had fee-simple title in equity therein, and his ownership was entire and sole. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

1936. Where agent purchased property for his principal and took title in his own name without disclosing the agency relationship, the principal could not recover on the policy since there was no privity of contract between him and the insurer. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

1936. The liabilities of fire insurers held controlled by the contracts as actually made with them, and they were unaffected by an undisclosed contract of applicant for policy with his principal who was the equitable owner. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

8075. Insurance without interest illegal.

1936. A contract of fire insurance is a personal contract with the insured and not on the property. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

1936. The liabilities of fire insurers held controlled by the contracts as actually made with them, and they were unaffected by an undisclosed contract of applicant for policy with his principal who was the equitable owner. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

1936. An agent holding the bare legal title to property purchased for his principal has no insurable interest therein. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

1936. Where agent purchased property for his principal and took title in his own name without disclosing the agency relationship, the principal could not recover on the policy since there was no privity of contract between him and the insurer. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

CHAPTER 165

CONCEALMENT AND REPRESENTATION

8086. Matters which need not be communicated without inquiry.

1939. Where there was no claimed concealment by owner of leased premises of fact that they were occupied by more than one tenant, and no representations made by him as to the occupancy, and the agent negotiating the policy knew that they were occupied by more than one tenant, a public liability policy was not voided because it contained a clause rendering it inoperative if the premises were not "wholly in the care and custody of a single tenant." *Curtis v. Zurich General Accident & Liability Ins. Co.*, Mont., 89 P. (2d) 1038.

8089. Waiver of communication.

1939. Where there was no claimed concealment by owner of leased premises of fact that they were occupied by more than one tenant, and no representations made by him as to the occupancy, and the agent negotiating the policy knew that they were occupied by more than one tenant, a public

liability policy was not voided because it contained a clause rendering it inoperative if the premises were not "wholly in the care and custody of a single tenant." *Curtis v. Zurich General Accident & Liability Ins. Co.*, Mont., 89 P. (2d) 1038.

8090. Interest of insured.

1936. The concealment of, or misrepresentation as to, a material fact in the procurement of an insurance policy renders it void. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

1936. Where agent purchased property for his principal and took title in his own name without disclosing the agency relationship, the principal could not recover on the policy since there was no privity of contract between him and the insurer. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

CHAPTER 166

THE POLICY

8106. Policy, what constitutes.

1936. An application for an insurance policy which is not referred to in the policy cannot be accepted as a part of the contract of insurance. *Shroeder v. Metropolitan Life Ins. Co.*, 103 Mont. 547, 63 P. (2d) 1016.

8107. What must be specified in a policy.

1936. Where agent purchased property for his principal and took title in his own name without disclosing the agency relationship, the principal could not recover on the policy since there was no privity of contract between him and the insurer. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

1936. The concealment of, or misrepresentation as to, a material fact in the procurement of an insurance policy renders it void. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

8108. Policy must contain the whole contract.

1936. In the absence of fraud, and questions of public policy, controversies arising out of contractual relations must be determined from the contract as made, and not by new ones contrived for the parties by the courts. *Schroeder v. Metropolitan Life Ins. Co.*, 103 Mont. 547, 63 P. (2d) 1016.

1936. An application for an insurance policy which is not referred to in the policy cannot be accepted as a part of the contract of insurance. *Shroeder v. Metropolitan Life Ins. Co.*, 103 Mont. 547, 63 P. (2d) 1016.

8109. Whose interest is covered.

1936. Where agent purchased property for his principal and took title in his own name without disclosing the agency relationship, the principal could not recover on the policy since there was no privity of contract between him and the insurer. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

1936. An agent holding the bare legal title to property purchased for his principal has no insurable interest therein. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

1936. Where property is insured by an agent holding the bare legal title the principal is the equitable owner and the entire and sole owner. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

8110. Insurance by agent or trustee.

1936. ✓ Where agent purchased property for his principal and took title in his own name without disclosing the agency relationship, the principal could not recover on the policy since there was no privity of contract between him and the insurer. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

1936. ✓ An agent holding the bare legal title to property purchased for his principal has no insurable interest therein. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

1936. ✓ Where property is insured by an agent holding the bare legal title the principal is the equitable owner and the entire and sole owner. *Stevens v. Steck*, 101 Mont. 569, 55 P. (2d) 7.

CHAPTER 168**LOSS AND NOTICE OF LOSS****8140. Excepted perils.**

1937. ✓ Where an insurance policy carried no clause of nonliability in case property insured was burned by the insured while insane, the insurer could not, in such a case, set off insured's tort against recovery for fire loss. *Hier v. Farmers Mutual Ins. Co.*, 104 Mont. 471, 67 P. (2d) 831.

8141. Loss caused by wilful act or fraud of insured.

1937. ✓ Where an insurance policy carried no clause of nonliability in case property insured was burned by the insured while insane, the insurer could not, in such a case, set off insured's tort against recovery for fire loss. *Hier v. Farmers Mutual Ins. Co.*, 104 Mont. 471, 67 P. (2d) 831.

1937. ✓ If the insured burns insured building while sane, to get insurance, he may not recover for the loss against the insurer, although the policy has no provision to that effect. *Hier v. Farmers Mutual Fire Ins. Co.*, 104 Mont. 471, 67 P. (2d) 831.

8144. Waiver of defects in notice, etc.

1939. ✓ Due proof of loss is a condition precedent to the right of recovery of any loss arising under the policy unless waived. The fact that the company, even with notice of loss, remains inert and fails to demand that insured comply with the stipulations as to proofs of loss does not constitute a waiver thereof, unless coupled with other facts calculated to lead insured to believe that proofs need not be furnished. *Conlon v. Northern Life Ins. Co.*, Mont., 92 P. (2d) 284.

8145. Waiver of delay.

1939. ✓ Due proof of loss is a condition precedent to the right of recovery of any loss arising under the policy unless waived. The fact that the company, even with notice of loss, remains inert and fails to demand that insured comply with the stipulations as to proofs of loss does not constitute a waiver thereof, unless coupled with other facts calculated to lead insured to believe that proofs need not be furnished. *Conlon v. Northern Life Ins. Co.*, Mont., 92 P. (2d) 284.

CHAPTER 169**DOUBLE INSURANCE—REINSURANCE****8149. Reinsurance defined.**

1937. ✓ Under the state insurance act, R. C. M. 1935, Ch. 179, §§ 173.2-173.20, the board of examiners had authority, § 173.10, if it so desired, to enter into a contract for reinsurance with the short rate cancellation clause in the contract, and, hence, it could adjust the cancellation on that basis. *Fitzpatrick v. State Board of Examiners*, 105 Mont. 234, 70 P. (2d) 285.

CHAPTER 171**FIRE INSURANCE****8157. Measure of the indemnity.**

1938. ✓ Cited in *McIntosh v. Hartford Fire Ins. Co.*, 106 Mont. 434, 78 P. (2d) 82, holding that the measure of recovery, where there is no valuation, and the property is partly destroyed, is a sum equal to the expense the insured would be put to in replacing the property in the condition in which it was at the time of the fire without deduction of an amount proportional to the depreciation of the building before the fire.

CHAPTER 173**INDEMNITY****8164. Indemnity for a future wrongful act void.**

1935. ✓ Merely because an act proves to be a trespass, which was not originally supposed to be so, will not render a promise of indemnity for the commission of it void. *Weir v. Tong*, 100 Mont. 1, 46 P. (2d) 45, applying rule where sheriff attached exempt property in good faith and later had to pay owner damages and then sued attachment plaintiff on his promise to indemnify sheriff for holding possession of property so attached.

1935. ✓ In action by sheriff against attachment plaintiff on latter's indemnity to sheriff for damages for wrongful attachment of exempt property the refusal of the court to instruct on exemptions was properly refused where prior action by attachment defendant against sheriff had adjudicated that the property had been wrongfully attached, since it was exempt, and adjudicated damages to attachment defendant, thus eliminating matter of requested instruction as an issue in the case. *Weir v. Tong*, 100 Mont. 1, 46 P. (2d) 45.

CHAPTER 175**LIABILITY AND EXONERATION OF
GUARANTORS—CONTINUING
GUARANTY****8184. Obligation of guarantor cannot exceed that of the principal.**

1939. ✓ "If an obligation be dependent on another obligation (and, by parity of reasoning, upon the legal existence of another instrument), and the latter

be discharged, or become void, the former is also discharged." Such is the law in Montana, where it is held that the effect of a bond is to extend the obligations of the contract to the surety. *Smith Engineering Co. v. Rice*, 102 Fed. (2d) 492. Citing, *Miller v. Stewart*, 22 U. S. 680, 706, 9 Wheat. 680, 706, 6 L. Ed. 189. *Gary Hay & Grain Co. v. Carlson*, 79 Mont. 111, 225 Pac. 722, also see 2 Rev. Codes of Mont. 1921, Par. 7553, 8184, 8185, 8202.

8185. Guarantor not liable on an illegal contract.

1939. ✓ "If an obligation be dependent on another obligation (and, by parity of reasoning, upon the legal existence of another instrument), and the latter be discharged, or become void, the former is also discharged." Such is the law in Montana, where it is held that the effect of a bond is to extend the obligations of the contract to the surety. *Smith Engineering Co. v. Rice*, 102 Fed. (2d) 492. Citing, *Miller v. Stewart*, 22 U. S. 680, 706, 9 Wheat. 680, 706, 6 L. Ed. 189. *Gary Hay & Grain Co. v. Carlson*, 79 Mont. 111, 225 Pac. 722, also see 2 Rev. Codes of Mont. 1921, Par. 7553, 8184, 8185, 8202.

CHAPTER 176

SURETYSHIP—SURETIES AND THEIR LIABILITY

8201. Surety discharged by certain acts of the creditor.

1939. ✓ "If an obligation be dependent on another obligation (and, by parity of reasoning, upon the legal existence of another instrument), and the latter be discharged, or become void, the former is also discharged." Such is the law in Montana, where it is held that the effect of a bond is to extend the obligations of the contract to the surety. *Smith Engineering Co. v. Rice*, 102 Fed. (2d) 492. Citing, *Miller v. Stewart*, 22 U. S. 680, 706, 9 Wheat. 680, 706, 6 L. Ed. 189. *Gary Hay & Grain Co. v. Carlson*, 79 Mont. 111, 225 Pac. 722, also see 2 Rev. Codes of Mont. 1921, Par. 7553, 8184, 8185, 8202.

CHAPTER 177

RIGHTS OF SURETIES AND CREDITORS

8202. Surety has rights of guarantor.

1939. ✓ "If an obligation be dependent on another obligation (and, by parity of reasoning, upon the legal existence of another instrument), and the latter be discharged, or become void, the former is also discharged." Such is the law in Montana, where

it is held that the effect of a bond is to extend the obligations of the contract to the surety. *Smith Engineering Co. v. Rice*, 102 Fed. (2d) 492. Citing, *Miller v. Stewart*, 22 U. S. 680, 706, 9 Wheat. 680, 706, 6 L. Ed. 189. *Gary Hay & Grain Co. v. Carlson*, 79 Mont. 111, 225 Pac. 722, also see 2 Rev. Codes of Mont. 1921, Par. 7553, 8184, 8185, 8202.

CHAPTER 181

REDEMPTION FROM LIENS—EXTINCTION OF LIENS

8238. Right to redeem.

1936. ✓ After the expiration of the time for statutory redemption, the assignee of a junior mortgage on land foreclosed on first mortgage could only protect himself from loss, in the absence of the tolling of the statute, and not be credited with rents and profits. *Parcells v. Nelson*, 103 Mont. 412, 63 P. (2d) 131.

1936. ✓ Where a junior mortgagee failed to exercise his statutory right to redeem from foreclosure of first mortgage within time which expired before he assigned his mortgage it was lost to him, passed to the assignee who could redeem, but not by invoking the statutory procedure for the exercise of the right of redemption. *Parcells v. Nelson*, 103 Mont. 412, 63 P. (2d) 131.

1936. ✓ While equity may intervene to grant relief when it is shown that an owner of property sold foreclosure of mortgage was prevented from redeeming during the period of statutory redemption and thus grant an extension of the period, the mere fact that a junior lienholder was not made a party to the foreclosure of the senior mortgage neither increases nor diminishes his statutory right of redemption. *Parcells v. Nelson*, 103 Mont. 412, 63 P. (2d) 131.

1936. ✓ The right of redemption from mortgage foreclosure arises only upon a sale, and exists for the period fixed by law. It is not property in any sense of the term, but a bare personal privilege. It is purely of statutory origin, and can only be exercised within the time and upon the conditions prescribed. *Parcells v. Nelson*, 103 Mont. 412, 63 P. (2d) 131.

1936. ✓ Sections 8238 and 8239 only declare the existence of a mortgagor's equity of redemption and extend its beneficent provisions to protect the holder of a junior lien when necessary for the protection of his interests; the substantive right "is enforceable only in equity, and has nothing to do with our statute of redemption." *Parcells v. Nelson*, 103 Mont. 412, 63 P. (2d) 131.

8239. Rights of inferior lienor.

1936. ✓ After the expiration of the time for statutory redemption, the assignee of a junior mortgage on land foreclosed on first mortgage could only protect

himself from loss, in the absence of the tolling of the statute, and not be credited with rents and profits. *Parcells v. Nelson*, 103 Mont. 412, 63 P. (2d) 131.

1936. ✓ Where a junior mortgagee failed to exercise his statutory right to redeem from foreclosure of first mortgage within time which expired before he assigned his mortgage it was lost to him, passed to the assignee who could redeem, but not by invoking the statutory procedure for the exercise of the right of redemption. *Parcells v. Nelson*, 103 Mont. 412, 63 P. (2d) 131.

1936. ✓ While equity may intervene to grant relief when it is shown that an owner of property sold foreclosure of mortgage was prevented from redeeming during the period of statutory redemption and thus grant an extension of the period, the mere fact that a junior lienholder was not made a party to the foreclosure of the senior mortgage neither increases nor diminishes his statutory right of redemption. *Parcells v. Nelson*, 103 Mont. 412, 63 P. (2d) 131.

1936. ✓ The right of redemption from mortgage foreclosure arises only upon a sale, and exists for the period fixed by law. It is not property in any sense of the term, but a bare personal privilege. It is purely of statutory origin, and can only be exercised within the time and upon the conditions prescribed. *Parcells v. Nelson*, 103 Mont. 412, 63 P. (2d) 131.

1936. ✓ Sections 8238 and 8239 only declare the existence of a mortgagor's equity of redemption and extend its beneficent provisions to protect the holder of a junior lien when necessary for the protection of his interests; the substantive right "is enforceable only in equity, and has nothing to do with our statute of redemption." *Parcells v. Nelson*, 103 Mont. 412, 63 P. (2d) 131.

CHAPTER 182

MORTGAGES IN GENERAL

Section

8261.1. Recording of subordination or waiver agreements—real estate—personal property.

8246. Mortgage defined.

1939. ✓ In enforcing a lien for materials and labor for and on a building on land outside a city or town, the decree awarded an acre of land of which the dwelling house constituted the geographical centre. This was held proper under the statute which does not more particularly describe the particular acre of land to which the lien extends. *Federal Land Bank of Spokane v. Green et al.*, Mont., 90 P. (2d) 489.

1939. ✓ Defendant's interest in the land was not reduced to less than a fee simple title because of the mortgage to the bank. A mortgage creates no estate or interest in the land. It is simply security for the performance of an act. *Federal Land Bank of Spokane v. Green et al.*, Mont., 90 P. (2d) 489.

8252. Mortgage does not entitle mortgagee to possession.

1939. ✓ To be good as against subsequent purchasers or encumbrancers, the description in the chattel mortgage must be sufficiently definite that a third person may from the language in the mortgage and

the information given by it, and from the inquiry suggested by it, determine with certainty what property was intended to be included in the mortgage. *Walker v. Johnson*, Mont., 91 P. (2d) 406.

1939. ✓ An assignee of a mortgage containing a clause "if the said mortgagee shall at any time consider the possession of said property * * * essential to the security of the payment of said promissory notes * * * said mortgagee * * * shall have the right to the immediate possession of said property, and shall have the right at his option to take and recover such possession from person or persons having or claiming same" etc., found the property in possession of a third person who claimed them under the foreclosure of a prior chattel mortgage, void for proper description. Held: the assignee was not a trespasser, nor wrong doer, and not liable in damages. *Walker v. Johnson*, Mont., 91 P. (2d) 406.

8255. Subsequently acquired title inures to mortgagee.

1935. ✓ As to a case where the mortgagor's after-acquired title to property sold on first mortgage foreclosure did not inure to purchaser on foreclosure of second mortgage, see *Minnesota v. Halverson*, 101 Mont. 49, 52 P. (2d) 159.

1935. ✓ The rule that a mortgagor's after-acquired title inures to the benefit of the mortgagee is based on estoppel. *Midland Realty Co. of Minnesota v. Halverson*, 101 Mont. 49, 52 P. (2d) 159.

8261.1. Recording of subordination or waiver agreements—real estate—personal property.

That a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any real estate mortgage of record of the property therein included may be recorded in like manner as a real estate mortgage, and a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any chattel mortgage on file, or the personal property therein described, may be filed in like manner as a chattel mortgage, and such record or such filing as the case may be, shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved. [L. '37, Ch. 126, § 1. Approved and in effect March 15, 1937.]

Section 2 repeals conflicting laws.

Note. This section is identical with the same-numbered section of R. C. M. 1935, except for the substitution of the word "of" for "or" in the phrase "of the property therein," in the first part of the section, although the section is not stated to be an amendment.

CHAPTER 183

MORTGAGES OF REAL PROPERTY

8264. Writing required for creating, extension or renewal of mortgages.

1939. ✓ A party taking a quit claim deed for a valuable consideration on property on which there was a mortgage which was no longer valid by reason of the lapse of 8 years and 60 days, and an unrecorded extension of the mortgage, of which the grantee had no notice, was held to be valid as against the mortgage and extension. *Aitken v. Lane*, Mont., 92 P. (2d) 628.

1939. ✓ An agreement to extend a real estate mortgage although not recorded is valid between the parties. *Aitken v. Lane*, Mont., 92 P. (2d) 628.

1938. ✓ Where the debt was not barred by the general statute of limitations as between the mortgagor and the mortgagee and was kept alive, the mortgage was good even after the expiration of the eight years from the maturity of the note, and one who accepts a conveyance of the mortgaged property from the mortgagor while the mortgage is good and valid is subject to the same rule. But the mortgage, even though the debt is alive, is invalid where there was no compliance with sections 8264 or 8267 as against a creditor who is in a position to assert the invalidity of the mortgage, or others who are similarly situated. *Missoula Trust & Savings Bank v. Boos*, 106 Mont. 294, 77 P. (2d) 385.

1938. ✓ On foreclosure of real estate mortgage on property of an insolvent estate, it is the duty of the administrator to interpose the defense of failure of mortgagee to file a renewal affidavit and thereby assert the invalidity of the mortgage where such defense is appropriate, and his failure to do so in constructive fraud on general creditors of the estate of which they may take advantage in having the foreclosure vacated. *Missoula Trust & Savings Bank v. Boos*, 106 Mont. 294, 77 P. (2d) 385.

1938. ✓ Where the court found, on adequate evidence, that even though a general creditor had made a demand on the administrator of an insolvent estate that he oppose foreclosure of a mortgage against the estate on the ground of limitations, it would have been useless on account of the administrator's fraud, he could have the foreclosure vacated on the ground of such fraud. *Missoula Trust & Savings Bank v. Boos*, 106 Mont. 294, 77 P. (2d) 385.

1938. ✓ A general creditor of an insolvent estate, without a lien on the mortgaged real estate, cannot intervene in foreclosure proceedings and claim that the mortgage was invalid because an affidavit of renewal had not been filed. *Missoula Trust & Savings Bank v. Boos*, 106 Mont. 294, 77 P. (2d) 385.

1935. ✓ Where the plaintiff, in a suit to set aside judgment of foreclosure, valid on its face, on the ground of extrinsic fraud, failed to disclose a prima facie defense as against the foreclosure proceeding, by alleging that the debt was barred by the statute of limitations, or that mortgage had not been renewed, as provided by statute, the complaint was insufficient for relief in equity. *Frisbee v. Coburn*, 101 Mont. 58, 52 P. (2d) 882.

8267. Period of lien of mortgage—renewal.

1939. ✓ A party taking a quit claim deed for a valuable consideration on property on which there was a mortgage which was no longer valid by reason of the lapse of 8 years and 60 days, and an unrecorded extension of the mortgage, of which the

grantee had no notice, was held to be valid as against the mortgage and extension. *Aitken v. Lane*, Mont., 92 P. (2d) 628.

1938. ✓ On foreclosure of real estate mortgage on property of an insolvent estate, it is the duty of the administrator to interpose the defense of failure of mortgagee to file a renewal affidavit and thereby assert the invalidity of the mortgage where such defense is appropriate, and his failure to do so in constructive fraud on general creditors of the estate of which they may take advantage in having the foreclosure vacated. *Missoula Trust & Savings Bank v. Boos*, 106 Mont. 294, 77 P. (2d) 385.

1938. ✓ Where the court found, on adequate evidence, that even though a general creditor had made a demand on the administrator of an insolvent estate that he oppose foreclosure of a mortgage against the estate on the ground of limitations, it would have been useless on account of the administrator's fraud, he could have the foreclosure vacated on the ground of such fraud. *Missoula Trust & Savings Bank v. Boos*, 106 Mont. 294, 77 P. (2d) 385.

1938. ✓ A general creditor of an insolvent estate, without a lien on the mortgaged real estate, cannot intervene in foreclosure proceedings and claim that the mortgage was invalid because an affidavit of renewal had not been filed. *Missoula Trust & Savings Bank v. Boos*, 106 Mont. 294, 77 P. (2d) 385.

1938. ✓ Where the debt was not barred by the general statute of limitations as between the mortgagor and the mortgagee and was kept alive, the mortgage was good even after the expiration of the eight years from the maturity of the note, and one who accepts a conveyance of the mortgaged property from the mortgagor while the mortgage is good and valid is subject to the same rule. But the mortgage, even though the debt is alive, is invalid where there was no compliance with sections 8264 or 8267 as against a creditor who is in a position to assert the invalidity of the mortgage, or others who are similarly situated. *Missoula Trust & Savings Bank v. Boos*, 106 Mont. 294, 77 P. (2d) 385.

1938. ✓ If the debt is barred by the general statute of limitations no recovery may be had thereon even though a renewal affidavit of the securing mortgage has been filed, as a mortgage cannot exist beyond the life of the debt. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

1937. ✓ Cited in *Matteson v. Ackerson*, 104 Mont. 239, 66 P. (2d) 797.

1936. ✓ A mortgage is not barred by the statute of limitations so long as the debt secured thereby is kept alive. *Sommer v. Wigen*, 103 Mont. 327, 62 P. (2d) 333.

1935. ✓ Where the plaintiff, in a suit to set aside judgment of foreclosure, valid on its face, on the ground of extrinsic fraud, failed to disclose a prima facie defense as against the foreclosure proceeding, by alleging that the debt was barred by the statute of limitations, or that mortgage had not been renewed, as provided by statute, the complaint was insufficient for relief in equity. *Frisbee v. Coburn*, 101 Mont. 58, 52 P. (2d) 882.

CHAPTER 184

MORTGAGES OF PERSONAL PROPERTY

8283. Attachment of mortgaged personal property.

1938. ✓ Cited in *Baker v. Tullock*, 106 Mont. 375, 77 P. (2d) 1035.

8285. To what instruments act applies.

1938. ✓ Cited in *Baker v. Tullock*, 106 Mont. 375, 77 P. (2d) 1035.

CHAPTER 187**MECHANICS' LIENS****8340. How lien perfected.**

1939. ✓ In enforcing a lien for materials and labor for and on a building on land outside a city or town, the decree awarded an acre of land of which the dwelling house constituted the geographical centre. This was held proper under the statute which does not more particularly describe the particular acre of land to which the lien extends. *Federal Land Bank of Spokane v. Green et al.*, Mont., 90 P. (2d) 489.

1939. ✓ Defendant's interest in the land was not reduced to less than a fee simple title because of the mortgage to the bank. A mortgage creates no estate or interest in the land. It is simply security for the performance of an act. *Federal Land Bank of Spokane v. Green et al.*, Mont., 90 P. (2d) 489.

8342. What property affected.

1939. ✓ Defendant's interest in the land was not reduced to less than a fee simple title because of the mortgage to the bank. A mortgage creates no estate or interest in the land. It is simply security for the performance of an act. *Federal Land Bank of Spokane v. Green et al.*, Mont., 90 P. (2d) 489.

1939. ✓ In enforcing a lien for materials and labor for and on a building on land outside a city or town, the decree awarded an acre of land of which the dwelling house constituted the geographical centre. This was held proper under the statute which does not more particularly describe the particular acre of land to which the lien extends. *Federal Land Bank of Spokane v. Green et al.*, Mont., 90 P. (2d) 489.

CHAPTER 189**LIENS UPON CROPS FOR SEED GRAIN AND HAIL INSURANCE****8365. Satisfaction of lien.**

1936. An action to foreclose a lien on crops given as security for premium notes on hail insurance, being a suit in equity, issues of law brought into the suit by subsequent pleadings did not deprive the court of its equitable jurisdiction. *Merchants Fire Assurance Corporation v. Watson*, 104 Mont. 1, 64 P. (2d) 617.

1936. In an action to foreclose lien on crops given as security for hail insurance premium notes a supplementary complaint, made necessary by defendant's actions subsequent to the filing of the original complaint, was merely an addition to the original, and both complaints were to be taken as one. *Merchants Fire Assurance Corporation v. Watson*, 104 Mont. 1, 64 P. (2d) 617.

1936. In the absence of statutory provisions for the enforcement of hail insurance liens on crops, a suit in equity is the proper remedy. *Merchants Fire Assurance Corporation v. Watson*, 104 Mont. 1, 64 P. (2d) 617.

CHAPTER 193**MISCELLANEOUS LIENS****8383. Agisters' liens and liens for service — priority.**

1936. ✓ In an action for the conversion of an automobile it was held that the defendant, under general denial, could show that he held the machine under a lien for storage, where such issue was one of the principal issues in the case and parties introduced evidence pro and con thereon. *Bethel v. Giebel*, 101 Mont. 410, 55 P. (2d) 1287, holding, also, such issue was for the jury, and that an instruction that the plaintiff was liable for the storage if she knew that it was so stored with the defendant at the time storage began or she thereafter assumed obligation therefor, was not reversible error, although long and involved.

1936. ✓ A garage proprietor held entitled to a lien for the storage of an automobile stored by the owner's husband as her agent, or without her knowledge or consent if she later assumed the obligation to pay therefor. *Bethel v. Giebel*, 101 Mont. 410, 55 P. (2d) 1287.

CHAPTER 198**CONSIDERATION****8432. What constitutes value.**

1937. ✓ While the cancellation or satisfaction of an antecedent debt constitutes a sufficient consideration for a transfer and may make the transferee a bona fide purchaser, the mere transfer of property to secure an antecedent debt does not make the transferee an innocent purchaser. *Rasmussen v. O. E. Lee & Co., Inc.*, 104 Mont. 278, 66 P. (2d) 119.

1937. ✓ In an action against guarantors by the guarantee on a renewal of a contract of guaranty the original contract was admissible to show the liability of the defendant guarantors for prior indebtedness, and therefore competent to establish consideration for the renewal guaranty contract. *W. T. Rawleigh Co. v. Miller*, 105 Mont. 456, 73 P. (2d) 552.

1937. ✓ Evidence, in an action to quiet title under an "unless" gas and oil lease, held to justify a finding for the plaintiff on the ground that the lease relied on by him was valid although a lease relied on by the defendant was known by the plaintiff's assignor to have been delivered in escrow and suit begun by defendant to compel delivery, before execution of the assignor's lease as against the defendant's contention that the lease to the plaintiff's assignor was a mere sham or pretext. *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586.

1937. ✓ A promissory note given by a lessee for a lease, although returned after a year, was a good and valuable consideration for the lease, and made the lessee a purchaser for value. *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586.

8435. Effect of want of consideration.

1936. ✓ The absence of consideration for a note and mortgage is a matter of defense which must be affirmatively pleaded, and a general averment is sufficient without setting out the evidentiary facts upon which the pleader relies. *Sommer v. Wigen*, 103 Mont. 327, 62 P. (2d) 333.

CHAPTER 200**RIGHTS OF HOLDER****8458. Right of holder to sue — payment.**

1937. ✓ Cited in *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

CHAPTER 213**GENERAL PROVISIONS****8597. General provisions.**

1937. ✓ Applied in *Gibbons v. Huntsinger*, 105 Mont. 562, 74 P. (2d) 443, holding that an agreement in a written contract that renewals must be in writing was waived by an oral agreement to renew.

CHAPTER 218**NUISANCE—REMEDIES AGAINST PUBLIC AND PRIVATE NUISANCES****8642. Nuisance defined.**

1938. ✓ The method of operation of a headgate by an upper proprietor, acquired by prescription, held not a nuisance. *Gibbs v. Gardner*, 107 Mont. 76, 80 P. (2d) 370.

1936. ✓ Maintenance of a cigar store where card games were played for money held a nuisance and it was abated by injunction ordering the removal of all fixtures, etc., used in conducting such nuisance, from the premises, that the fixtures be sold and proceeds used as provided by section 11130, that the premises be closed for one year, and that the operator, his servants, etc., be perpetually enjoined from conducting such nuisance. *State ex rel. Nagle v. Naughton*, 103 Mont. 306, 63 P. (2d) 123. See, also, *State ex rel. Nagle v. Antinoli*, 103 Mont. 321, 63 P. (2d) 129.

1936. ✓ While neither sections 8642 nor 2815.60 et seq., make the sale of intoxicating liquor a nuisance, sections 2815.10 et seq. make the sale of beer in violation a nuisance. *State ex rel. Nagle v. Naughton*, 103 Mont. 306, 63 P. (2d) 123.

1935. ✓ Refining crude oil is a legitimate business and is not a nuisance per se, but may become a nuisance by the manner in which it is constructed or operated, as if it gives off noxious fumes. *Purcell v. Davis*, 100 Mont. 480, 50 P. (2d) 255.

1935. ✓ The operation, in a residential district, of any business which materially injures property and annoys residents will be enjoined as a nuisance. *Purcell v. Davis*, 100 Mont. 480, 50 P. (2d) 255.

CHAPTER 219**RELIEF IN GENERAL****8658. Relief in case of forfeiture.**

1935. ✓ Vendees of land held entitled to relief from forfeiture for nonpayment of installments of purchase price on payment of reasonable rental value of premises during the period of their occupancy, where the vendor failed to pay irrigation water charges, payment for which was provided for in contract but no time for payment was specified therein, and vendee suffered no damage from such nonpayment. *Huston v. Vollenweider*, 101 Mont. 156, 53 P. (2d) 112.

1935. ✓ Under this section a person may be relieved in any case where he sets forth facts which appeal to the conscience of a court of equity. *Huston v. Vollenweider*, 101 Mont. 156, 53 P. (2d) 112.

CHAPTER 220**COMPENSATORY RELIEF — DAMAGES — INTEREST ON DAMAGES — EXEMPLARY DAMAGES****8659. Person suffering detriment may recover damages.**

1938. ✓ Plaintiff, a customer at defendant store fell and was injured by tripping over an obstruction in the aisle of the store placed there by a John Doe defendant, employee of defendant store. Action removed to federal court and by them remanded to state court. It was held that a resident defendant in a non-separable controversy anchors the case in the state court; and the non-resident defendant may not remove the suit to a federal court merely because the resident defendant has not been served with process nor voluntarily appeared in the action. *Jensen v. Safeway Stores*, 24 Fed. Supp. 585. Citing *Grosso v. Butte Electric R. Co. et al.* D. C., 217 Fed. 422; *Del Fungo Giera v. Rockland Light & Power Co. et al.*, D. C., 46 Fed. (2d) 552; *Armstrong v. Kansas City Southern R. Co. et al.*, C. C., 38 Fed. 608; *Patchin v. Hunter*, C. C. 38 Fed. 51.

8660. Dertiment defined.

1938. ✓ Plaintiff, a customer at defendant store fell and was injured by tripping over an obstruction in the aisle of the store placed there by a John Doe defendant, employee of defendant store. Action removed to federal court and by them remanded to state court. It was held that a resident defendant in a non-separable controversy anchors the case in the state court; and the non-resident defendant may not remove the suit to a federal court merely because the resident defendant has not been served with process nor voluntarily appeared in the action. *Jensen v. Safeway Stores*, 24 Fed. Supp. 585. Citing *Grosso v. Butte Electric R. Co. et al.* D. C., 217 Fed. 422; *Del Fungo Giera v. Rockland Light & Power Co. et al.*, D. C., 46 Fed. (2d) 552; *Armstrong v. Kansas City Southern R. Co. et al.*, C. C., 38 Fed. 608; *Patchin v. Hunter*, C. C. 38 Fed. 51.

8662. Person entitled to recover damages may recover interest thereon.

1939. The defendant did not offer to pay the amount which he admitted to be liable so as to stop the running of interest. It was therefore proper

for the trial court to allow interest on the amount of the lien. *Federal Land Bank of Spokane v. Green et al.*, Mont., 90 P. (2d) 489.

8666. Exemplary damages—in what cases allowed.

1939. ✓ The complaint need not set out the punitive charges *eo nomine*, but must allege the acts of the defendant to have been characterized by fraud, oppression, malice or the like, and punitive damages cannot be assessed except where actual damages have been awarded. *Truzzolino Food Products Co. v. F. W. Woolworth Co.*, Mont., 91 P. (2d) 415.

1939. ✓ The question of punitive damages is left to the jury, and it may make such award as is proper in its judgment under the circumstances. The appellate court will not disturb the award unless its determination appears to have been influenced by passion, prejudice, or some improper motive, or unless the amount is outrageously disproportionate either to the wrong or the situation or circumstances of the parties. *Truzzolino Food Products Co. v. F. W. Woolworth Co.*, Mont., 91 P. (2d) 415.

1939. ✓ Generally the question of malice or no malice is for the jury. *Vaughn v. Mesch*, 107 Mont. 498, 87 P. (2d) 177.

1939. ✓ The test of malice in an assault case is not the quantum of force but whether the assailant was in a malicious state of mind, so far as the awarding of exemplary damages is concerned. *Vaughn v. Mesch*, 107 Mont. 498, 87 P. (2d) 177.

1939. ✓ In an assault case the use of a dangerous weapon is itself some evidence of a wanton disregard of human life and generally gives rise to the right of punitive damages. *Vaughn v. Mesch*, 107 Mont. 498, 87 P. (2d) 177.

CHAPTER 221

MEASURE OF DAMAGES

8668. Damages must be certain.

1937. ✓ Where an established business is wrongfully interrupted by the landlord, recovery by a tenant may be had for anticipated profits based upon the profits theretofore received in the same location, but where a plaintiff was about to embark on a new business venture but was wrongfully prevented by the defendant, he can recover nothing on account of the expected profits, for there is nothing to prove that a profit would have been made. *Jurcec v. Raznik*, 104 Mont. 45, 64 P. (2d) 1076.

1937. ✓ Where rooming house proprietor leased part of a building for rooming house business, and lease was breached by the owner of the building before the tenant moved in by leasing the space to another tenant, it was held that the prospective tenant could recover nothing in the way of loss of profits as there was no evidence as to what the profits would have been had the lease not been broken, although the prospective tenant, on being denied possession resumed the conduct of her rooming house business several blocks away, since such profits, if any, would have been derived from a new or expanding business. *Jurcec v. Raznik*, 104 Mont. 45, 64 P. (2d) 1076.

1937. ✓ Where a landlord breached his lease before the tenant could move in, the proper damages recoverable by the prospective tenant was the difference between the value of the term and the rental

agreed upon, in addition to any expense the prospective tenant was put to in preparation to move in or moving expenses, if any were incurred by her, plus any down payment she had made. *Jurcec v. Raznik*, 104 Mont. 45, 64 P. (2d) 1076.

1937. ✓ Profits which are a mere matter of speculation cannot be the basis of recovery in suits for breach of contract, while profits which are reasonably certain may be. *Jurcec v. Raznik*, 104 Mont. 45, 64 P. (2d) 1076.

8672. Breach of agreement to convey real property.

1937. ✓ Where a landlord breached his lease before the tenant could move in, the proper damages recoverable by the prospective tenant was the difference between the value of the term and the rental agreed upon, in addition to any expense the prospective tenant was put to in preparation to move in or moving expenses, if any were incurred by her, plus any down payment she had made. *Jurcec v. Raznik*, 104 Mont. 45, 64 P. (2d) 1076.

CHAPTER 222

DAMAGES FOR WRONGS

8686. Breach of obligation other than contract.

1938. ✓ Plaintiff, a customer at defendant store fell and was injured by tripping over an obstruction in the aisle of the store placed there by a John Doe defendant, employee of defendant store. Action removed to federal court and by them remanded to state court. It was held that a resident defendant in a non-separable controversy anchors the case in the state court; and the non-resident defendant may not remove the suit to a federal court merely because the resident defendant has not been served with process nor voluntarily appeared in the action. *Jensen v. Safeway Stores*, 24 Fed. Supp. 585. Citing *Grosso v. Butte Electric R. Co. et al.* D. C., 217 Fed. 422; *Del Fungo Giera v. Rockland Light & Power Co. et al.*, D. C., 46 Fed. (2d) 552; *Armstrong v. Kansas City Southern R. Co. et al.*, C. C., 38 Fed. 608; *Patchin v. Hunter*, C. C. 38 Fed. 51.

8687. Wrongful occupation of real property.

1938. ✓ Lessee from the United States of Indian lands held over beyond the terms of his lease preventing subsequent lessee from the United States taking possession. In an unlawful detainer suit brought by the United States triple damages were assessed against prior lessee. Upon appeal it was held that the United States was the proper party plaintiff and that triple damages were proper under the circumstances *R. C. M.*, 1935, sections 8687, 9889 and 9901. *Stoltz v. United States*, 99 Fed. (2d) 283.

CHAPTER 224

COMPENSATORY RELIEF—GENERAL PROVISIONS

Section

8706.1. Personal injury actions—damages recoverable against county.

8706.1. Personal injury actions—damages recoverable against county. In civil actions

against boards of county commissioners or members thereof to recover damages for personal injuries arising out of or from breach of duty relative to the condition of roads, highways or bridges, only nominal damages shall be recovered unless it be established by the evidence that the action or non-action complained of was a wilful or a gross neglect of duty. [L. '39, Ch. 153, § 1, adding subsection to R. C. M. 1935, § 8706. Approved and in effect March 11, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 226

SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS

8715. Remedy mutual.

1937. ✓ Cited in Connor v. Helvik, 105 Mont. 437, 73 P. (2d) 541. See same case under sections 8716 and 8717.

8716. No remedy unless mutual.

1937. ✓ The contention that there was a lack of mutuality of remedies in an action for specific performance of a contract for the conveyance of real estate by the vendor against the purchaser was held without merit in Connor v. Helvik, 105 Mont. 437, 73 P. (2d) 541.

8717. Distinction between real and personal property.

1937. ✓ Where, in an action for specific performance of a contract for the conveyance by the seller against the buyer, the defendant purchaser presented no evidence to overcome the presumption of lack of adequate remedy at law, specific performance by the purchaser of his agreement to pay the purchase price was decreed in Connor v. Helvik, 105 Mont. 437, 73 P. (2d) 541.

8720. What cannot be specifically enforced.

1936. ✓ Letters held not to contain sufficient definite terms to constitute a contract for the conveyance of land to authorize a decree for specific performance. Reeves v. Littlefield, 101 Mont. 482, 54 P. (2d) 879.

1936. ✓ To justify a decree for specific performance of a contract its terms must not only be certain but they must also be complete. Reeves v. Littlefield, 101 Mont. 482, 54 P. (2d) 879.

CHAPTER 229

PREVENTIVE RELIEF—INJUNCTIONS

8736. Preventive relief—how granted.

1936. ✓ Injunction held properly granted to restrain injury to property on which county had a tax lien, and to recover damages for injury already done. Complaint held sufficient. State ex rel. Tillman v. District Court, 101 Mont. 176, 53 P. (2d) 107.

CHAPTER 230

MAXIMS OF JURISPRUDENCE

8739.

1936. Maxim applied to transfer of water rights in gross, Osnes Livestock Co. v. Warren, 103 Mont. 284, 62 P. (2d) 206, holding the subject to transfer.

8740.

1937. Section 6014.47 held to prohibit a bank president from buying land from the bank for a less price than the bank's investment therein, construing the section under the rules of sections 8740 and 8771. Johnson v. Kaiser, 104 Mont. 261, 65 P. (2d) 1179.

8742.

1939. Cited in Pierce v. Pierce, Mont., 89 P. (2d) 269.

1937. The notice required by section 5668.42 may be waived by the contractor, being for his benefit alone, and is waived by voluntarily agreeing to pay the materialmen for supplies furnished to a subcontractor, in the contract with the state, and in his surety bond, so that the giving of such notice is unnecessary to entitle a materialman to recover for materials furnished the subcontractor. H. Earl Clack Co. v. Staunton, 105 Mont. 375, 72 P. (2d) 1022.

1935. Anticipated but uncertain damage from an oil refinery to be erected near land of the plaintiff which he desires to sell, held not to justify the granting of an injunction against such erection, since the injury could be readily compensated by damages in an action at law. Purcell v. Davis, 100 Mont. 480, 50 P. (2d) 255.

8743.

1935. ✓ One may use his own property as he sees fit for all purposes to which it is adaptable, without being answerable for the consequences, if he is not an active agent in designedly causing injury, if he does not create a nuisance, or if he exercises due care and caution to prevent injury, but must so use his right as not to infringe upon the rights of another. Purcell v. Davis, 100 Mont. 480, 50 P. (2d) 255.

1935. ✓ Anticipated but uncertain damage from an oil refinery to be erected near land of the plaintiff which he desires to sell, held not to justify the granting of an injunction against such erection, since the injury could be readily compensated by damages in an action at law. Purcell v. Davis, 100 Mont. 490, 50 P. (2d) 255.

8745.

1938. ✓ Cited in Cook-Reynolds Co. v. Beyer, 107 Mont. 1, 79 P. (2d) 658, denying reformation of a written instrument concerning real estate commissions on the ground of estoppel.

8746.

1938. ✓ A subcontractor who failed to complete his work because of the failure of the contractor to carry on and which work was completed by the bonding company, is not entitled to the difference in price between what the subcontractor agreed to pay for materials supplied by others and the sums actually paid by the bonding company. No one can take advantage of his own wrong. United States v. Seaboard Surety Co., 26 Fed. Supp. 681.

1937. ✓ Where a mortgagor represented fraudulently to the plaintiff mortgagee that there was no mortgage ahead of his mortgage, though there was such a mortgage recorded, the plaintiff was entitled to prove the valuelessness of his mortgage and to attach the property of the mortgagor because of such valuelessness without first foreclosing, though seven years had elapsed before he brought the action wherein the affidavit for attachment was filed. *Bailey v. Hansen*, 105 Mont. 552, 74 P. (2d) 438.

1936. Cited in *Ford Motor Co. v. Linnane*, 102 Mont. 325, 57 P. (2d) 803.

8759.

1936. ✓ Where claim was not filed until after three months after being rejected and mailed for filing, when the clerk found it among his papers, it was not filed within the meaning of the statute until actually filed. *Pierce v. Pierce*, Mont., 89 P. (2d) 269.

8761.

1938. ✓ There was no necessity of proving that petitioner in mandamus was entitled to attorney fees where his attorney signed petition and performed services in the presence of the court. *State ex rel. Lynch v. Batani*, 103 Mont. 353, 62 P. (2d) 565.

1938. ✓ In passing on the sufficiency of a record on appeal of a case which had only reached the demurrer stage, it was said that "to say that this appeal can only be presented by a bill of exceptions would do violence to the plain meaning of section 12045, which, construed with section 12074, would seem to contemplate such a bill only when same had of necessity been settled. The suggested procedure would be an idle act, section 8761, which, if required, would in effect add nothing to the record but the signature of the trial judge." *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1937. ✓ Where, in action of a note, the plaintiff pleaded payment of interest by debtor within the period of the statute of limitations, he did not have to reply to answer setting up defense of limitations, since to do so would be but a repetition of an allegation of the complaint, and an idle gesture. *Matteson v. Ackerson*, 104 Mont. 239, 66 P. (2d) 797.

1936. ✓ The failure of the lessee of gas producing land to drill offset wells to prevent drainage by wells not on the land leased, in accordance with an implied covenant so to do, held not a breach of the lease where there was no market for the gas produced by producing well on the leased land, since the law does not require the doing of idle acts. *Severson v. Barstow*, 103 Mont. 526, 63 P. (2d) 1022.

8771.

1937. ✓ Section 6014.47 held to prohibit a bank president from buying land from the bank for a less price than the bank's investment therein, construing the section under the rules of sections 8740 and 8771. *Johnson v. Kaiser*, 104 Mont. 261, 65 P. (2d) 1179.

CHAPTER 231

DEFINITIONS AND GENERAL PROVISIONS

8776. Meaning of words.

1938. ✓ Relief cannot be given under section 9187 for a mistake of law in view of sections 7475, 7485-7487, 8776. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

1938. ✓ The belief of counsel that a mortgage renewal affidavit prevented the debt from being outlawed by limitations was a mistake of law and could not be relieved under section 9187. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

1937. ✓ Cited in *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

8781. Constructive notice.

1939. ✓ Knowledge of agent negotiating public liability policy that premises covered were occupied by more than one tenant was imputed to insurer as notice that the premises were not "wholly in the care and custody of a single tenant" within a clause of the policy. *Curtis v. Zurich General Accident & Liability Ins. Co.*, Mont., 89 P. (2d) 1038.

1937. ✓ Evidence, in an action to quiet title under an "unless" gas and oil lease, held to justify a finding for the plaintiff on the ground that the lease relied on by him was valid although a lease relied on by the defendant was known by the plaintiff's assignor to have been delivered in escrow and suit begun by defendant to compel delivery, before execution of the assignor's lease, as against the defendant's contention that the lease to the plaintiff's assignor was a mere sham or pretext. *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586.

1937. ✓ In an action to quiet title to oil and gas lease it was held that, since assignee of a lease with notice takes all rights of his assignor who took without notice, the plaintiff assignee of a lease was not chargeable with constructive statutory notice of a lease to the defendant which was executed by the lessor after the assignor's lease was executed and before the assignment to plaintiff. *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586.

1936. ✓ Where claim was not filed until after three months after being rejected and mailed for filing, when the clerk found it among his papers, it was not filed within the meaning of the statute until actually filed. *Pierce v. Pierce*, Mont., 89 P. (2d) 269.

Code of Civil Procedure

CHAPTER 3

SUPREME COURT

8796. Law declared an emergency measure.

1936. Section 378 was not repealed by section 8796 or any other statute. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

8805. Powers and duties of supreme court on appeals.

1937. Where the plaintiff offered certain evidence, which was excluded, and defendant took appeal from adverse judgment, but plaintiff made no cross-assignments, the case was remitted to the trial court for a new trial instead of dismissing, since cross-assignments even if made would not enable the supreme court to say that the errors in favor of the plaintiff were compensated by the errors against him, in the absence of the evidence itself. *Phelps v. Union Central Life Ins. Co.*, 105 Mont. 195, 71 P. (2d) 887.

1936. The court did not take up all the assignments of error, but pointed out the objectionable matters in the record and passed upon those they deemed essential to a final determination of the case, in *Herrin v. Herrin*, 103 Mont. 469, 63 P. (2d) 137.

1936. A new trial was granted where the trial court made an erroneous finding in a mortgage foreclosure case which was not supported by the evidence in *Sommer v. Wigen*, 103 Mont. 327, 62 P. (2d) 333.

1936. The supreme court remanded an equity case, instead of reviewing the evidence and entering a decree, where the evidence was meager and confused, and the determinative finding of the trial court tendered an entirely new element not included in the pleadings or proof of either party. *Horst v. Staley*, 101 Mont. 543, 54 P. (2d) 876.

CHAPTER 4

DISTRICT COURTS

8829. Original jurisdiction.

1936. The district court, when sitting as a probate court, is not limited by the restrictions of the former probate court, but has plenary powers in matters of probate and heirship. In *re Baxter's Estate*, 101 Mont. 504, 54 P. (2d) 869.

1935. Under the constitution of the state, the district court has original jurisdiction in all cases at law and in equity and of all matters of probate. This language has been transported totidem verbis into section 8829, R. C. M. 1921. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

8832. Terms and departments of court in districts having more than one judge.

1936. Where one judge of a two-judge district issued an alternative writ of mandamus, and the relator, on learning, three days before the day set for the hearing to show cause, that the other judge would sit at such hearing, filed an affidavit of disqualification of such judge to sit, one day before the hearing date, it was held that such judge properly disregarded the affidavit on the ground that it was not filed in time, and properly proceeded to hear the issue as to the order to show cause, despite the fact that at such hearing the respondent filed a demurrer and motion to quash the writ, which were incidental to the return and which the judge overruled. *State ex rel. Eden v. Schneider*, 102 Mont. 286, 57 P. (2d) 783.

CHAPTER 5

JUSTICE AND POLICE COURTS

8842. Criminal jurisdiction.

1937. The exclusive jurisdiction of a prosecution of one practicing medicine or surgery without a license is in the district court, and not in the justice court, in view of the fact that the maximum penalty in the latter court is a \$500 fine and imprisonment for six months, while the maximum penalty for the above offense is a fine of \$1,000 and imprisonment for one year. *State ex rel. Freebourn v. District Court*, 105 Mont. 77, 69 P. (2d) 748.

CHAPTER 10

DISQUALIFICATIONS OF JUDICIAL OFFICERS

8868. Cases in which judge may be disqualified — calling in another judge.

1936. Where one judge of a two-judge district issued an alternative writ of mandamus, and the relator, on learning, three days before the day set for the hearing to show cause, that the other judge would sit at such hearing, filed an affidavit of disqualification of such judge to sit, one day before the hearing date, it was held that such judge properly disregarded the affidavit on the ground that it was not filed in time, and properly proceeded to hear the issue as to the order to show cause, despite the fact that at such hearing the respondent filed a demurrer and motion to quash the writ, which were incidental to the return and which the judge overruled. *State ex rel. Eden v. Schneider*, 102 Mont. 286, 57 P. (2d) 783.

CHAPTER 12

MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS

8882. Means to carry jurisdiction into effect.

1937. ✓ The district court, before the completion of the canvass, held entitled to advise the canvassing as to certain matters in regard to procedure in the counting of votes where it did nothing more than direct their attention to the contents of certain applicable statutory provisions. *State ex rel. Riley v. District Court*, 103 Mont. 576, 64 P. (2d) 115.

1937. The district court has jurisdiction to receive the final report of the board of canvassers, in an election contest, until the canvass is completed, and it is not completed until the board advises the court that it is completed. *State ex rel. Riley v. District Court*, 103 Mont. 576, 64 P. (2d) 115.

1936. ✓ Motion to dismiss application for a writ of supervisory control was overruled where an order of a district judge for the payment of fees of executor for extraordinary services was annulled by another judge of the district on the ground that an action had been instituted in another state for the recovery of the amount, since such action would complicate and delay the settlement of the estate, and waste the estate in needless litigation. *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295.

1936. ✓ An application for a writ of supervisory control to review an order of one district judge, of a two-judge district, annulling an order of the other judge who ordered the allowance of extraordinary executor's fees through inadvertence in not ascertaining that proper notice of the hearing for the fees had not been given to a coexecutor and residuary legatee, was dismissed in *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295.

1936. ✓ While the writ of supervisory control will ordinarily not be issued when the right of appeal exists, as it is to be used sparingly, the fact that an appeal is available is not conclusive against the writ. *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295.

1936. ✓ The writ of supervisory control is employed to correct error within jurisdiction, independent of either the appellate or original jurisdiction declared by article 8 of the constitution, and is not to be confused with the original writ therein authorized to be issued by the supreme court. *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295.

1936. ✓ The issuance of the writ of supervisory control by the supreme court is not restricted either by the constitution or codes. It is in the nature of a summary appeal—a shortcut—to control the course of litigation in the trial court when necessary to prevent a miscarriage of justice, and may be employed to prevent extended and needless litigation. *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295.

1936. ✓ To attack an allowance of executor's fees for extraordinary services on the ground of inadvertence or fraud, a motion would properly be directed against the decree of settlement of the final account of the executor, rather than against the separate order of the court making the allowance. *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295, holding, also, that such allowance could be reached in the exercise of supervisory control, otherwise only by appeal.

1936. ✓ The writ of supervisory control is not available to a party who has merely allowed the time to appeal to expire. *State ex rel. Meyer v. District Court*, 102 Mont. 222, 57 P. (2d) 778.

CHAPTER 13

DIFFERENT KINDS OF JURIES DEFINED

Section

- 8883. Jury defined.
- 8885. Grand jury defined.
- 8886. Trial jury defined.
- 8887. Number of a trial jury.
- 8889. Jury of inquest defined.

8883. Jury defined. A jury is a body of persons temporarily selected from the citizens of a particular district, and invested with power to present or indict a person for a public offense, or to try a question of fact. [L. '39, Ch. 203, § 1, amending R. C. M. 1935, § 8883. Approved March 17, 1939; in effect January 1, 1940.]

Section 12 repeals conflicting laws.

8885. Grand jury defined. A grand jury is a body of persons, seven in number, returned in pursuance of law, from the citizens of a county, before a court of competent jurisdiction, and sworn to inquire of public offenses committed or triable within the county. [L. '39, Ch. 203, § 2, amending R. C. M. 1935, § 8885. Approved March 17, 1939; in effect January 1, 1940.]

Section 12 repeals conflicting laws.

8886. Trial jury defined. A trial jury is a body of persons returned from the citizens of a particular district before a court or officer of competent jurisdiction, and sworn to try and determine, by verdict, a question of fact. [L. '39, Ch. 203, § 3, amending R. C. M. 1935, § 8886. Approved March 17, 1939; in effect January 1, 1940.]

Section 12 repeals conflicting laws.

8887. Number of a trial jury. A trial jury consists of twelve persons; provided, that in civil actions and cases of misdemeanor, it may consist of twelve, or any number less than twelve, upon which the parties may agree in open court. [L. '39, Ch. 203, § 4, amending R. C. M. 1935, § 8887. Approved March 17, 1939; in effect January 1, 1940.]

Section 12 repeals conflicting laws.

8889. Jury of inquest defined. A jury of inquest is a body of persons summoned from the citizens of a particular district before the sheriff, coroner, or other ministerial officer, to

inquire concerning particular facts. [L. '39, Ch. 203, § 5, amending R. C. M. 1935, § 8889. Approved March 17, 1939; in effect January 1, 1940.

Section 12 repeals conflicting laws.

CHAPTER 14

QUALIFICATIONS AND EXEMPTIONS OF JURORS

Section

8890. Who competent to act as juror.
8890.1. Statutes concerning jurors—construction—
“he” or “him” includes all persons.
8893. Who exempt from jury duty.
8894. Who may be excused.
8895. Affidavit of claim to exemption.

8890. Who competent to act as juror. A person is competent to act as a juror if:

1. A citizen of the United States of the age of twenty-one and not more than seventy years, who shall have been a resident of the state one year, and of the county ninety days before being selected and returned.

2. In possession of natural faculties, and of ordinary intelligence and not decrepit.

3. Possessed of sufficient knowledge of the English language.

4. Assessed on the last assessment roll of the county on property belonging to him or her. [L. '39, Ch. 203, § 6, amending R. C. M. 1935, § 8890. Approved March 17, 1939; in effect January 1, 1940.

Section 12 repeals conflicting laws.

1937. Cited in *State v. Bucy*, 104 Mont. 416, 66 P. (2d) 1049.

8890.1. Statutes concerning jurors—construction—“he” or “him” includes all persons. It is specifically provided that whenever the term “he” or “him” appears in any statute of the state of Montana, relative to jurors, it shall be construed as including all persons. [L. '39, Ch. 203, § 10. Approved March 17, 1939; in effect January 1, 1940.

Section 12 repeals conflicting laws.

8892. Who not competent to act as juror.

1937. Cited in *State v. Bucy*, 104 Mont. 416, 66 P. (2d) 1049.

8893. Who exempt from jury duty. A person is exempt from liability to act as juror if:

1. A judicial, civil or military officer of the United States or of this state;

2. A person holding a county, township, or town office;

3. An attorney-at-law in practice;

4. A minister of the gospel, or a priest of any denomination, or editor, following his profession;

5. A teacher in a university, college, academy or school;

6. A practicing physician, dentist, or druggist actually engaged in the business of dispensing medicines, or a regularly licensed embalmer or undertaker;

7. An officer, keeper or attendant of an almshouse, hospital, asylum, or other charitable institution;

8. Engaged in the performance of duty as officer or attendant of the state prison, penitentiary, or of a county jail;

9. An express agent, mail carrier, superintendent, employee or operator of a telegraph line doing general telegraph business in the state;

10. An active member of the national guard of Montana, or an active member of a fire department of any city or town in this state. The number of firemen hereby exempted must not exceed twenty-eight, including officers for each company organized; and such members from each company must be selected from the roll of such company, according to the seniority of membership, and a list containing the names of such persons must be made out by the secretary of each company and filed with the clerk of the board of county commissioners on the first Mondays of December, March, June and September, and any failure to file the list hereby required is considered a waiver of such exemption.

11. A superintendent on a railroad.

12. A nurse engaged on a case or a person caring directly for one or more children.

The court must discharge a person from serving as a trial juror, in either of the following cases:

Where it satisfactorily appears that he or she is not competent; and,

Where it satisfactorily appears that he or she is exempt and claims the benefit of exemption. [L. '39, Ch. 203, § 7, amending R. C. M. 1935, § 8893. Approved March 17, 1939; in effect January 1, 1940.

Section 12 repeals conflicting laws.

8894. Who may be excused. A juror must not be excused by a court for a slight or trivial cause, or for hardship or inconvenience to his or her business, but only when material injury or destruction to his or her property, or of property entrusted to him or her is threatened, or when his or her own health, or the sickness or death of a member of his or her family requires his or her absence. [L. '39,

Ch. 203, § 8, amending R. C. M. 1935, § 8894. Approved March 17, 1939; in effect January 1, 1940.

Section 12 repeals conflicting laws.

8895. Affidavit of claim to exemption. If a person, exempt from liability to act as a juror, as provided in section 8893, be summoned as a juror, he or she may make and transmit his or her affidavit to the clerk of the court for which he or she is summoned, stating his or her office, occupation or employment; and such affidavit must be delivered by the clerk to the judge of the court where the name of such person is called, and if sufficient in substance, must be received as evidence of his or her right to exemption and as an excuse for non-attendance in person. The affidavit must then be filed by the clerk. [L. '39, Ch. 203, § 9, amending R. C. M. 1935, § 8895. Approved March 17, 1939; in effect January 1, 1940.

Section 12 repeals conflicting laws.

CHAPTER 15

SELECTING AND RETURNING JURORS

8900. Same.

1938. Cited in *Baker v. Tullock*, 106 Mont. 375, 77 P. (2d) 1035.

CHAPTER 16

DRAWING AND SUMMONING JURORS FOR COURTS OF RECORD

Section

8903. District judge to draw jury.

8904. Drawing—how conducted—entry in minutes—name of person drawn—omitting from list—clerk to certify list.

8903. District judge to draw jury. Immediately upon the order mentioned in the preceding section having been made the district judge shall in the presence of the clerk of the court proceed to draw the jurors from jury box No. 1. [L. '39, Ch. 3, § 1, amending R. C. M. 1935, § 8903, as amended by L. '37, Ch. 151, § 1. Approved and in effect February 7, 1939.

Section 6 repeals conflicting laws.

Note. That the last sentence of section 8903, as amended by L. '37, as above, concerning the manner of drawing where there are two or more judges is the same county, was omitted by the amendment of L. '39.

1938. This section, as amended in L. '37, was cited in *Ledger v. McKenzie*, 107 Mont. 335, 85 P. (2d) 352.

8904. Drawing—how conducted—entry in minutes—name of person drawn—omitting from list—clerk to certify list. 1. The clerk must place said box on a rod so that the same may readily revolve and said box must be revolved a sufficient number of times so as to insure that the capsules in said box shall become thoroughly mixed, and thereafter the judge must draw from said box one at a time, as many of said capsules containing the names of jurors as are ordered by the court.

2. A minute of the drawing shall be entered in the minutes of the court, which must show the name on each slip of paper so drawn from said jury box.

3. If the name of any person is drawn from said box who is deceased or insane, or who may have permanently removed from the county, or who is exempt from jury service, and the fact shall be made to appear to the satisfaction of the court, the name of such person shall be omitted from the list, and the slip of paper having such name on it shall be destroyed and another juror drawn in his place, and the fact shall be entered upon the minutes of the court. The same proceeding shall be had as often as may be necessary, until the number of jurors required shall have been drawn. After the drawing shall have been completed, the clerk shall make a copy of the list of names of the persons so drawn, and certify the same. In his certificate he shall state the date of the order and of the drawing, and the number of the jurors drawn, and the time when and the place where such jurors shall be required to appear. Such certificate and list shall be delivered to the sheriff for service. [L. '39, Ch. 3, § 2, amending R. C. M. 1935, § 8904, as amended by L. '37, Ch. 151, § 2. Approved and in effect February 7, 1939.

Section 6 repeals conflicting laws.

1938. Repealed section of the laws of 1937, cited in *Ledger v. McKenzie*, 107 Mont. 335, 85 P. (2d) 352.

CHAPTER 20

STENOGRAPHERS

8929. Duties of stenographers.

1937. The trial court, in the absence of an express stipulation waiving the taking of the evidence, should inquire of the contending parties if a record is desired, and the records of the court should then be made to show the express waiver if in fact such waiver is made. *State ex rel. Stimatz v. District Court*, 105 Mont. 510, 74 P. (2d) 8.

1937. Sections 8929 to 8931 have relation to circumstances when the official stenographer is acting and taking a record, but they do not relate to the

duty of the stenographer to attend and take testimony. *State ex rel. Stimatz v. District Court*, 105 Mont. 510, 74 P. (2d) 8.

1937. ✓ This section lodges a certain discretion in the trial court, in the absence of a request by one of the parties, in the matter of taking full stenographic notes of testimony, and the refusal of such a request would be an abuse of discretion which could be corrected at the time by proper procedure. *State ex rel. Stimatz v. District Court*, 105 Mont. 510, 74 P. (2d) 8.

1935. ✓ Upon the objection of counsel to the statements made by the county attorney and the request of counsel for the attendance of the official stenographer, it was held an abuse of discretion on the part of the trial court not to comply with the request, although not prejudicial to the rights of the defendant, where he was able to have a common-law bill of exceptions settled sufficient to preserve his right. *State v. Hogan*, 100 Mont. 434, 49 P. (2d) 446.

1935. ✓ It is within the sound judicial discretion of the court as to when it is necessary for the official stenographer to make a record of the proceedings before it. *State v. Hogan*, 100 Mont. 434, 49 P. (2d) 446.

8931. To furnish copies to parties, etc.

1938. ✓ A stenographer is not entitled to extra compensation, under this section, for the preparation of a transcript of proceedings to punish an indirect or constructive contempt for the violation of a restraining order growing out of a civil suit, where the county was not a party thereto, although the transcript was ordered by the court for use in making return on a writ of certiorari issued on application by the contemner to the supreme court, as such proceedings were not of a criminal nature, but were prosecuted for the protection of a private right, and extra compensation was not authorized under any provision of this section. *Pelletier v. Glacier County*, 107 Mont. 221, 82 P. (2d) 595.

1938. ✓ "In view of the strictly prohibitory language of the legislature, limiting the stenographer's salary and fees to definite specified amounts for definite services rendered, it is incumbent upon the stenographer to clearly and unequivocally show that his claim comes within the statute allowing fees over and above his official salary. If he is unable to do this, the presumption is that his services were rendered for his official salary, as designated in section 8933. *Pelletier v. Glacier County*, 107 Mont. 221, 82 P. (2d) 595.

8933. Salary and expenses of stenographer — apportionment.

1938. ✓ In view of the strictly prohibitory language of the legislature, limiting the stenographer's salary and fees to definite specified amounts for definite services rendered, it is incumbent upon the stenographer to clearly and unequivocally show that his claim comes within the statute allowing fees over and above his official salary. If he is unable to do this, the presumption is that his services were rendered for his official salary, as designated in section 8933. *Pelletier v. Glacier County*, 107 Mont. 221, 82 P. (2d) 595.

8934. Stenographer pro tempore.

1939. ✓ Granting of extension of time to file bill of exceptions held not abuse of discretion though grounds were that reporter was engaged in private employment, but also had work on "other cases." *Jenson v. Cloud*, Mont., 88 P. (2d) 36.

CHAPTER 21

QUALIFICATIONS, ADMISSION, LICENSE, AND DISBARMENT OF ATTORNEYS

8936. Who may be admitted as attorneys.

1937. ✓ A corporation can never be authorized to practice law itself, and neither can it employ attorneys to practice for another. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

1937. ✓ If any person shall engage in the practice of law without being authorized so to do, even though that practice is not done directly in the supreme court, that court has the right to punish for contempt. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

1937. ✓ A corporate collection agency soliciting accounts for collection, and maintaining suits on assignments thereof through agents, held punishable for contempt for practicing law unlawfully. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

1937. ✓ A corporation is not a "person" who may practice law. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

8943. Penalty for practicing without license.

1937. ✓ Held in *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

1937. ✓ If any person shall engage in the practice of law without being authorized so to do, even though that practice is not done directly in the supreme court, that court has the right to punish for contempt. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

8944. Who deemed to be practicing law.

1937. ✓ A corporation which prepared pleadings and filed them in court to collect claims assigned it for the collection, was practicing law within the meaning of section 8944. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

1937. ✓ A corporate collection agency soliciting accounts for collection, and maintaining suits on assignments thereof through agents, held punishable for contempt for practicing law unlawfully. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

8953. Appointment of attorney as special investigator.

1936. ✓ Where an attorney sold stock and appropriated the proceeds to his own use, the evidence in disbarment proceedings, held not to sustain his defense that the money had been loaned to him. In re Hansen, 101 Mont. 490, 54 P. (2d) 882.

8961. Disbarment of attorneys — clauses — jurisdiction.

1937. ✓ A corporate collection agency soliciting accounts for collection, and maintaining suits on assignments thereof through agents, held punishable for contempt for practicing law unlawfully. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

CHAPTER 22

GENERAL PROVISIONS RELATING TO THE POWERS, DUTIES, LIABILITIES AND COMPENSATION OF ATTORNEYS

8974. Authority.

1938. ✓ Under section 8974 a stipulation filed by an attorney under the belief that a mortgage debt was not outlawed by the statute of limitations where a renewal affidavit of the securing mortgage was filed was binding on his client, though a mistake of law. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

8980. Attorney prohibited from acquiring claims for purpose of bringing action thereon.

1938. ✓ This section, by clear implication, intends to discourage litigation and keep it within certain bounds in the interest of a sound public policy, and is to be construed as expressing the public policy of the state in that regard. *Streetbeck v. Benson*, 107 Mont. 110, 80 P. (2d) 861.

1938. ✓ A plaintiff who took assignments of causes of action and commenced action in his individual capacity and later had himself made trustee for such creditors and amended his complaint so as to represent himself as suing in the capacity as trustee, held not authorized to maintain the action where his real status had not changed to that of the real party in interest. *Streetbeck v. Benson*, 107 Mont. 110, 80 P. (2d) 861.

1937. ✓ Cited in *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

8981. Certain other transactions prohibited — penalty for violation of two preceding sections.

1938. ✓ Cited in *Baker v. Tullock*, 106 Mont. 375, 77 P. (2d) 1035.

8983. Same rule when party prosecutes in person.

1937. ✓ Cited in *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

8993. Lien for compensation.

1939. ✓ Though an attorney for the plaintiff asserted a claim for more than half the amount sued for he was not a "real party in interest," as the lien was incidental to the cause of action. *Phelps v. Union Central Life Ins. Co.*, Mont., 88 P. (2d) 58.

1938. ✓ This section was not intended to restrict but to enlarge or extend the attorney's lien, which theretofore existed on the cause of action, so as to attach to the judgment and thereafter to the proceeds of the verdict, report, decision, or judgment. *Baker v. Tullock*, 106 Mont. 375, 77 P. (2d) 1035.

1938. ✓ The lien attaches to the judgment or to a compromise agreement, and the attorney's interest cannot be defeated or satisfied by a voluntary payment to his client without his consent. *Baker v. Tullock*, 106 Mont. 375, 77 P. (2d) 1035.

1938. ✓ It is competent for the legislature to provide for an attorney's lien on the client's cause of action even though the cause of action is an intangible, incorporeal something, and the lien which the statute fixes on the plaintiff's right of action follows the transition, without interruption, and

simply attaches to that into which the right of action is merged. *Baker v. Tullock*, 106 Mont. 375, 77 P. (2d) 1035.

1938. ✓ This section is a remedial statute which should be construed in advancement of the remedy, and so as to secure and protect, and not defeat, the rights and objects intended by its provisions. *Baker v. Tullock*, 106 Mont. 375, 77 P. (2d) 1035.

8994. Attorney may be compelled to show his authority.

1935. ✓ Only parties interested in an estate can have any right to object to the report of the administrator, and the court or judge, on motion, may require an attorney of an adverse party to produce and prove authority under which he appears, and may at any time summarily relieve a party from the consequence of the acts of an unauthorized party. In *re Astibia's Estate*, 100 Mont. 224, 46 P. (2d) 712.

CHAPTER 24

FORM OF CIVIL ACTION

9008. One form of civil actions only.

1939. An appeal does not lie from an order denying a rehearing or reappraisal. In *re Blankenbaker's Estate*, Mont., 91 P. (2d) 401.

1939. The filing of a motion for a new trial or rehearing of the order determining the inheritance tax does not affect the right to appeal from the order, or prolong the time within which an appeal therefrom could be taken. In *re Blankenbaker's Estate*, Mont., 91 P. (2d) 401.

1937. ✓ Citing sections 9008-9832 and 10018-10464 it was held that though the supreme court could not ascertain from the record on appeal what moved the trial court in the exercise of its power to appoint a guardian, the absence of testimony, touching the qualifications of minor's nominee to serve as guardian, appointed by the trial court, did not prevent the minor's father from taking an appeal, since he could have brought the evidence before the supreme court by means of a common-law or bystander's bill of exceptions as the basis for an appeal in the regular mode. *State ex rel. Stimatz v. District Court*, 105 Mont. 510, 74 P. (2d) 8.

CHAPTER 26

LIMITATION OF ACTIONS FOR THE RECOVERY OF REAL PROPERTY

9015. Seizin within ten years — when necessary in actions for real property — action for dower.

1937. ✓ In an action to quiet title to land formed by accretion the defendant claiming title by adverse possession of his predecessor in title was defeated for the reason that neither he nor his predecessor had ever paid, or offered to pay, taxes on the land. *Smith v. Whitney*, 105 Mont. 523, 74 P. (2d) 450.

1937. ✓ In an action to quiet title, where the defendant claims the land by adverse possession, the plaintiff makes out a prima facie case by showing that the record title is in him, and the burden is thrown on defendant to prove title by adverse possession. *Smith v. Whitney*, 105 Mont. 523, 74 P. (2d) 450.

9016. Such seizin, when necessary in action or defense arising out of title to or rents of real property.

1937. In an action to quiet title to land formed by accretion the defendant claiming title by adverse possession of his predecessor in title was defeated for the reason that neither he nor his predecessor had ever paid, or offered to pay, taxes on the land. *Smith v. Whitney*, 105 Mont. 523, 74 P. (2d) 450.

1937. In an action to quiet title, where the defendant claims the land by adverse possession, the plaintiff makes out a prima facie case by showing that the record title is in him, and the burden is thrown on defendant to prove title by adverse possession. *Smith v. Whitney*, 105 Mont. 523, 74 P. (2d) 450.

9018. Possession—when presumed—occupation deemed under legal title, unless adverse.

1937. In an action to quiet title, where the defendant claims the land by adverse possession, the plaintiff makes out a prima facie case by showing that the record title is in him, and the burden is thrown on defendant to prove title by adverse possession. *Smith v. Whitney*, 105 Mont. 523, 74 P. (2d) 450.

9019. Occupation under written instrument or judgment—when deemed adverse.

1937. Color of title does not depend upon the validity or effect of the instrument, but entirely upon its intent and meaning. *Sullivan v. Neel*, 105 Mont. 253, 73 P. (2d) 206.

1937. A quit claim deed executed by the chairman of the board of county commissioners to correct a former deed to land to which the county had a defective title held to give color of title to the grantee, under the rule that color of title is that which is title in appearance, but not in reality. *Sullivan v. Neel*, 105 Mont. 253, 73 P. (2d) 206.

1937. Quit claim deeds, speaking generally, are sufficient to evidence color of title. *Sullivan v. Neel*, 105 Mont. 253, 73 P. (2d) 206.

1937. Occupancy by licensees of claimant by adverse possession under color of title, for grazing and gold dredging held sufficient in action to quiet title by such claimant. *Sullivan v. Neel*, 105 Mont. 253, 73 P. (2d) 206.

1937. The phrase "claim of title," as used in section 9019 is synonymous with that of "color of title." *Sullivan v. Neel*, 105 Mont. 253, 73 P. (2d) 206.

9020. What constitutes adverse possession under written instrument or judgment.

1937. Occupancy by licensees of claimant by adverse possession under color of title, for grazing and gold dredging held sufficient in action to quiet title by such claimant. *Sullivan v. Neel*, 105 Mont. 253, 73 P. (2d) 206.

1937. In an action to quiet title based upon adverse possession under color of title it was held that plaintiff should prevail against the contention that the proof was insufficient to prove adverse possession, since the land was not inclosed and was occupied only for grazing and placer mining purposes, only for limited periods, hence the occupation was not continuous. *Sullivan v. Neel*, 105 Mont. 253, 73 P. (2d) 206.

9021. Premises actually occupied under the claim of title deemed to be held adversely.

1937. Occupancy by licensees of claimant by adverse possession under color of title, for grazing and gold dredging held sufficient in action to quiet title by such claimant. *Sullivan v. Neel*, 105 Mont. 253, 73 P. (2d) 206.

9022. What constitutes adverse possession under claim of title not written.

1937. Cited in *Sullivan v. Neel*, 105 Mont. 253, 73 P. (2d) 206.

9023. Relation, of landlord and tenant as affecting adverse possession.

1937. Occupancy by licensees of claimant by adverse possession under color of title, for grazing and gold dredging held sufficient in action to quiet title by such claimant. *Sullivan v. Neel*, 105 Mont. 253, 73 P. (2d) 206.

9024. Payment of taxes necessary to prove adverse possession.

1938. In order to acquire a water right by adverse user or prescription, it is essential that the proof must show that the use has been continuous for the statutory period; exclusive (uninterrupted, peaceable); open (notorious); under claim of right (color of title); hostile and an invasion of another's rights which he has a chance to prevent. *Irion v. Hyde*, 107 Mont. 84, 81 P. (2d) 353.

1938. If the use of a water right be a permissive one, no matter how long continued, it can never ripen into an adverse or prescriptive right. *Irion v. Hyde*, 107 Mont. 84, 81 P. (2d) 353.

1938. The burden of proving adverse user of water rests on the party alleging it. *Irion v. Hyde*, 107 Mont. 84, 81 P. (2d) 353.

1937. The possession of reality, to be adverse, must be actual, visible, exclusive, hostile, and continuous for the full period. *Sullivan v. Neel*, 105 Mont. 253, 73 P. (2d) 206.

1937. This section applied to a claim of title by adverse possession of accreted lands. *Smith v. Whitney*, 105 Mont. 523, 74 P. (2d) 450.

1937. In an action to quiet title to land formed by accretion the defendant claiming title by adverse possession of his predecessor in title was defeated for the reason that neither he nor his predecessor had ever paid, or offered to pay, taxes on the land. *Smith v. Whitney*, 105 Mont. 523, 74 P. (2d) 450.

1937. The phrase "claim of title," as used in section 9019, is synonymous with that of "color of title." *Sullivan v. Neel*, 105 Mont. 253, 73 P. (2d) 206.

CHAPTER 27

LIMITATION OF OTHER ACTIONS

9027. Periods of limitation prescribed.

1939. An action was brought by the state to renew a judgment in its favor entered more than 10 years before, claiming that the running of the statute of limitations was tolled by the pendency of appeals to the state supreme court and the United States Supreme Court, supersedeas bonds filed in each appeal. Held: that the supersedeas bond merely prohibited the issuance of an execution pending appeal, and the

appeal itself did not prohibit the bringing of an action to renew the judgment within the 10 year limitation, and therefore did not toll the statute. *State v. Hart Refiners*, Mont., 92 P. (2d) 766.

1938. ✓ This section provides a limitation upon the time within which one who had obtained a judgment may claim the fruits of such judgment, but do not limit the life of a title to property fixed by a court decree. Suits to adjudicate water rights are in the nature of actions to quiet title to realty, and the running of time tends to strengthen rather than destroy title determined by decree. *Missoula Light & Power Co. v. Hughes*, 106 Mont. 355, 77 P. (2d) 1041.

9028. Within ten years.

1939. ✓ An action was brought by the state to renew a judgment in its favor entered more than 10 years before, claiming that the running of the statute of limitations was tolled by the pendency of appeals to the state supreme court and the United State Supreme Court, supersedeas bonds filed in each appeal. Held: that the supersedeas bond merely prohibited the issuance of an execution pending appeal, and the appeal itself did not prohibit the bringing of an action to renew the judgment within the 10 year limitation, and therefore did not toll the statute. *State v. Hart Refiners*, Mont., 92 P. (2d) 766.

1938. ✓ This section provides a limitation upon the time within which one who had obtained a judgment may claim the fruits of such judgment, but do not limit the life of a title to property fixed by a court decree. Suits to adjudicate water rights are in the nature of actions to quiet title to realty, and the running of time tends to strengthen rather than destroy title determined by decree. *Missoula Light & Power Co. v. Hughes*, 106 Mont. 355, 77 P. (2d) 1041.

9029. Within eight years.

1938. ✓ Cited in *Fergus County v. Osweiler*, 107 Mont. 466, 86 P. (2d) 410.

1937. ✓ Where, in action of a note, the plaintiff pleaded payment of interest by debtor within the period of the statute of limitations, he did not have to reply to answer setting up defense of limitations, since to do so would be but a repetition of an allegation of the complaint, and an idle gesture. *Matteson v. Ackerson*, 104 Mont. 239, 66 P. (2d) 797.

1937. ✓ In action on a note, the complaint setting out the note in haec verba and endorsement showing payment of interest within the time of the statute of limitations, held sufficient to toll the statute. *Matteson v. Ackerson*, 104 Mont. 239, 66 P. (2d) 797.

1935. ✓ Where the plaintiff, in a suit to set aside judgment of foreclosure, valid on its face, on the ground of extrinsic fraud, failed to disclose a prima facie defense as against the foreclosure proceeding, by alleging that the debt was barred by the statute of limitations, or that mortgage had not been renewed, as provided by statute, the complaint was insufficient for relief in equity. *Frisbee v. Coburn*, 101 Mont. 58, 52 P. (2d) 882.

1935. ✓ One seeking the benefit of the general statute of limitations to defeat a real estate mortgage, even though he be a purchaser and not bound to pay the mortgage debt, must plead the statute; and he waives it if not so pleaded. *Frisbee v. Coburn*, 101 Mont. 58, 52 P. (2d) 882.

1935. ✓ Evidence held to show that debtor had tolled statute of limitations by payment by check and written acknowledgment of debt. *Rock Island Plow Co. v. Cut Bank Implement Co.*, 101 Mont. 117, 53 P. (2d) 116.

9032. Within two years.

1938. ✓ The legislature intended to create a rule of limitation applicable to all actions for seduction, and it is not for this court to adopt an interpretation of that statute which may be influenced, either in whole or in part, by the age, innocence, or circumstances by which the seduction was procured." *Taylor v. Rann*, 106 Mont. 588, 80 P. (2d) 376.

1938. ✓ The statute of limitations begins to run against an action for seduction from the time of the first intercourse. *Taylor v. Rann*, 106 Mont. 588, 80 P. (2d) 376.

9033. Two-year limitation.

1939. ✓ Action brought in 1934 to recover treble damages for violation of anti trust laws predicated upon a price war between meat packers in Montana in 1931. Held, that the Montana two year statute of limitations applied and the case was dismissed. *Hansen Packing Co. v. Swift Co. et al.*, 27 Fed. Supp. 364.

1937. ✓ An action for reformation is not barred by this statute of limitation. *Fidelity and Deposit Co. v. State of Montana*, 92 Fed. (2d) 693. Citing, *Higgins Oil Co. v. Snow*, (C. C. A.) 113 Fed. 433.

1935. ✓ Under subsection 4 of section 9033 the plaintiff must show when the fraud or concealment was discovered, and the circumstances of the discovery must be shown, so the court may see whether by ordinary diligence it might not have been made before. *Frisbee v. Coburn*, 101 Mont. 58, 52 P. (2d) 882.

1935. ✓ Under subsection 4 of this section the word "discovery" implies that the facts have been concealed from the party relying on the section, and whether, under the facts shown, there has been a discovery is a question of law. *Frisbee v. Coburn*, 101 Mont. 58, 52 P. (2d) 882.

1935. ✓ Relief from judgment of foreclosure of mortgage was held barred where action was commenced more than five years after rendition of judgment and more than two years after knowledge by plaintiff of some of the facts indicating fraud; knowledge being equivalent to discovery under section 9033. *Frisbee v. Coburn*, 101 Mont. 58, 52 P. (2d) 882.

9041. Actions for relief not hereinbefore provided for.

1937. ✓ The provisions of section 9066 apply to section 9041, and since in sections 9836-9846, relating to writs of review, nothing is found relative to the limitations of actions with reference to these proceedings, section 9866 is applicable and controlling in such proceedings. *Shaffroth v. Lamere*, 104 Mont. 175, 65 P. (2d) 610.

1937. ✓ Where there were no funds in the county treasury to pay warrants outstanding, levies having been made but not collected, the right of action on warrants did not accrue until collection and money was put in treasury, and statute of limitations against right to mandamus treasurer to pay them did not begin to run until that time. *State ex rel. De Kalb v. Ferrell*, 105 Mont. 218, 70 P. (2d) 290.

1937. ✓ Since it is the duty of the county treasurer to pay out no funds not authorized by law he could, in mandamus to compel him to pay funds that he had not set aside as irrigation district funds,

assert defense that five year limitation for bringing mandamus had past, where he acted in good faith. *State ex rel. De Kalb v. Ferrell*, 105 Mont. 218, 70 P. (2d) 290.

1937. When there are no funds in the county treasury to pay outstanding warrants the warrant holder need not reduce his claim to judgment in order to toll the statute of limitations, if running against his right to mandamus the treasurer to compel payment, since that would be an idle gesture, tend to dishonor the credit of the county, and involve it in useless litigation. *State ex rel. De Kalb v. Ferrell*, 105 Mont. 218, 70 P. (2d) 290.

1937. This section contains the only limitation applicable to mandamus proceedings. *State ex rel. De Kalb v. Ferrell*, 105 Mont. 218, 70 P. (2d) 290.

1935. Relief from judgment of foreclosure of mortgage was held barred where action was commenced more than five years after rendition of judgment and more than two years after knowledge by plaintiff of some of the facts indicating fraud; knowledge being equivalent to discovery under section 9033. *Frisbee v. Coburn*, 101 Mont. 58, 52 P. (2d) 882.

CHAPTER 28

GENERAL PROVISIONS RELATING TO THE TIME OF COMMENCEMENT OF ACTIONS

9047. When an action is commenced.

1938. Plaintiff, a customer at defendant store fell and was injured by tripping over an obstruction in the aisle of the store placed there by a John Doe defendant, employee of defendant store. Action removed to federal court and by them remanded to state court. It was held that a resident defendant in a non-separable controversy anchors the case in the state court; and the non-resident defendant may not remove the suit to a federal court merely because the resident defendant has not been served with process nor voluntarily appeared in the action. *Jensen v. Safeway Stores*, 24 Fed. Supp. 585. Citing *Grosso v. Butte Electric R. Co. et al.* D. C., 217 Fed. 422; *Del Fungo Giera v. Rockland Light & Power Co. et al.* D. C., 46 Fed. (2d) 552; *Armstrong v. Kansas City Southern R. Co. et al.* C. C., 38 Fed. 608; *Patchin v. Hunter*, C. C. 38 Fed. 51.

9055. Provision where action is stayed by injunction.

1939. An action was brought by the state to renew a judgment in its favor entered more than 10 years before, claiming that the running of the statute of limitations was tolled by the pendency of appeals to the state supreme court and the United State Supreme Court, supersedeas bonds filed in each appeal. Held: that the supersedeas bond merely prohibited the issuance of an execution pending appeal, and the appeal itself did not prohibit the bringing of an action to renew the judgment within the 10 year limitation, and therefore did not toll the statute. *State v. Hart Refiners*, Mont., 92 P. (2d) 766.

9065. Objection that action was not commenced in time — how taken.

1937. Where, in action on a note, the plaintiff pleaded payment of interest by debtor within the period of the statute of limitations, he did not have to reply to answer setting up defense of limitations,

since to do so would be but a repetition of an allegation of the complaint, and an idle gesture. *Matteson v. Ackerson*, 104 Mont. 239, 66 P. (2d) 797.

9066. Action includes special proceedings.

1937. The provisions of section 9066 apply to section 9041, and since in sections 9836-9846, relating to writs of review, nothing is found relative to the limitations of actions with reference to these proceedings, section 9866 is applicable and controlling in such proceedings. *Shaffroth v. Lamere*, 104 Mont. 175, 65 P. (2d) 610.

CHAPTER 29

PARTIES TO CIVIL ACTIONS

9067. Action to be in name of party in interest.

1939. Though an attorney for the plaintiff asserted a claim for more than half the amount sued for he was not a "real party in interest," as the lien was incidental to the cause of action. *Phelps v. Union Central Life Ins. Co.*, Mont., 88 P. (2d) 58.

1938. A plaintiff who took assignments of causes of action and commenced action in his individual capacity and later had himself made trustee for such creditors and amended his complaint so as to represent himself as suing in the capacity as trustee, held not authorized to maintain the action where his real status had not changed to that of the real party in interest. *Streetbeck v. Benson*, 107 Mont. 110, 80 P. (2d) 861.

1938. This section, by clear implication, intends to discourage litigation and keep it within certain bounds in the interest of a sound public policy, and is to be construed as expressing the public policy of the state in that regard. *Streetbeck v. Benson*, 107 Mont. 110, 80 P. (2d) 861.

1938. "The camouflage of a simulated transfer cannot make the transferee the real party in interest within this section." *Streetbeck v. Benson*, 107 Mont. 110, 80 P. (2d) 861.

1937. A corporation which prepared pleadings and filed them in court to collect claims assigned it for the collection, was practicing law within the meaning of section 8944. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

1937. This section does not permit a corporate collection agency to sue on claims, other than negotiable paper, assigned to it for the purpose of collection. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

1937. This section does not authorize suit by one who holds only legal title of a claim for the purpose of collection. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

1937. Statutes in Montana governing the warehousing of grain required public warehousemen to give bond covering the grain held by them. There was no such requirement as to beans. A bond was taken by Chatterson and Sons in the name of the State of Montana for the benefit of the persons storing beans in their warehouse. After default by Chatterson and Sons the State of Montana sued for the use and benefit of the holders of the defaulted warehouse receipts. Held, that the bonding company having executed the bond in favor of the state for the use and benefit of these parties the bonding company is in

no position to claim that the state is not the proper party to enforce its obligation. *Fidelity and Deposit Co. v. State of Montana*, 92 Fed. (2d) 693. Citing, *County of Wheatland v. Van*, 64 Mont. 113, 207 P. 1003, 20 R. C. L. 665-667, 47 C. J. 26.

1935. ✓ The assignee of the lessor of an oil prospecting permit could sue, as real party in interest, the lessee's assignee of the permit where the lease provided that, in addition to a cash payment, a royalty contingent upon production should be payable to lessor "or order." *Herigstad v. Hardrock Oil Co.*, 101 Mont. 22, 52 P. (2d) 171.

9068. Assignment of thing in action not to prejudice defense.

1937. Cited in *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

9069. When a married woman is a party—actions by and against.

1936. Suit on warehouseman's bond issued in the name of the State of Montana for the benefit of those who stored beans in warehouse. Bond inadvertently read grain instead of beans. Held that bond could be reformed to read "beans" instead of "grain," and that the suit could be brought in the name of the State of Montana. *State of Montana v. Fidelity and Deposit Co.*, 16 F. Supp. 489.

9071. Infant, etc., to appear by guardian.

1938. ✓ Cited in *State ex rel. Haynes v. District Court*, 106 Mont. 578, 81 P. (2d) 422.

9073. Unmarried female may sue for her own seduction.

1938. ✓ An unmarried female's action for seduction is not abated by her marriage between the institution of the action and the trial. *Taylor v. Rann*, 106 Mont. 588, 80 P. (2d) 376.

9078. Why may be joined as defendants.

1936. ✓ In an action by the board of railroad commissioners to enjoin a carrier from the use of the highways by means of motor vehicles operated on a commercial basis without authorization, where he claimed the right to so operate them as a contract employee of the members of a voluntary association, the court was not authorized to find that such an arrangement was a mere subterfuge to evade the law, since the members of the association were not before it as parties. *Board of Railroad Commissioners v. Reed*, 102 Mont. 382, 58 P. (2d) 271, holding, also, that the plaintiff, if it did not know of the association at the time it instituted the suit, on the filing of the answer at the time set for the hearing, should have asked for a continuance and reframed its pleadings so as to bring in the association.

9085. Tenants in common, etc. may sever in bringing or defending action.

1937. A co-tenant, in prosecuting or defending actions concerning the common property, may treat the same as his own as against every one except his co-tenant. *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586.

9086. Action—when not to abate by death, marriage, or other disability—proceedings in such case.

1938. ✓ An unmarried female's action for seduction is not abated by her marriage between the institution

of the action and the trial. *Taylor v. Rann*, 106 Mont. 588, 80 P. (2d) 376.

1938. ✓ The abatement of an action, once the cause of action has accrued, is not favored. *Taylor v. Rann*, 106 Mont. 588, 80 P. (2d) 376.

1936. ✓ Where assessment of land was enjoined and, pending appeal by the defendant, the owner plaintiff deeded the land to another, the defendant had a right to have the appeal heard, as against the contention that the question of the right to assess had become moot. *Rosebud Land & Improvement Co. v. Carterville Irrigation District*, 102 Mont. 465, 58 P. (2d) 765.

9087. Another person may be substituted for the defendant interpleader.

1938. ✓ Interpleader by warehouseman held brought under section 4095, and not under this section, where affirmative relief was sought by the warehouseman. *Rocky Mountain Elevator Co. v. Bammel*, 106 Mont. 407, 81 P. (2d) 673.

1936. ✓ The purpose of this section was to expedite litigation and afford protection to both persons and property involved in litigation. *Union Bank & Trust Co. v. Bank of Townsend*, 103 Mont. 260, 62 P. (2d) 677.

1936. ✓ Interpleader under this section distinguished from old equity interpleader. *Union Bank & Trust Co. v. State Bank of Townsend*, 103 Mont. 260, 62 P. (2d) 677.

1936. ✓ Where claimant under bank cashier's check discontinued action against bank, but not against indorser's, the bank's petition for interpleader should, on deposit of check in court, have been treated as original complaint under second portion of section 9087. *Union Bank & Trust Co. v. Bank of Townsend*, 103 Mont. 26, 62 P. (2d) 677.

9088. Intervention—when it takes place, and how made.

1936. ✓ Where the income from a mortgaged estate was placed in bank by receiver pending court order to pay it over, and mortgagee appealed from decision of foreclosure and disposition of income, and mortgagor's attorney procured cashier's check from depository bank, which mortgagor cashed at another bank despite stop order, in suit by cashing bank against depository bank on the check, the mortgage receiver, mortgagor, and mortgagee, were entitled to intervene. *Burgess et al. v. Hooks*, 103 Mont. 245, 62 P. (2d) 228.

1936. ✓ Where parties are admitted as interveners, the pleadings which they present and file must state facts sufficient, if true, to establish the right or interest which they claim. *Burgess et al. v. Hooks*, 103 Mont. 245, 62 P. (2d) 228.

1936. ✓ Where a grain company intervened in a land foreclosure suit to seek the determination of the rights of the mortgagee and mortgagor to grain, or its proceeds, grown on the land and sold by the mortgagor to the grain company, the mortgagor had the right to file a cross-complaint to the intervention complaint for the money allegedly due the mortgagor for the grain so sold. *State ex rel. Union Central Life Ins. Co. v. District Court*, 102 Mont. 371, 58 P. (2d) 491.

1936. ✓ Under this section, intervention is permissible in any case provided only the person seeking to intervene can show either an interest in the subject-matter of the action, or an interest in the success of the parties, or an interest in the subject-matter as against both. *Burgess et al. v. Hooks*, 103 Mont. 245, 62 P. (2d) 228.

1936. ✓ The purpose of this section is to avoid circuity of action and multiplicity of suits, if intervenor's interest be such that he would be prejudicially affected as a necessary consequence of the determination of the action without his presence as a party to it. *Burgess et al. v. Hooks*, 103 Mont. 245, 62 P. (2d) 228.

9089. Associates may be sued by name of association.

1936. ✓ Service of notice to perpetuate testimony may be made on resident manager or agent of a foreign association doing business in Montana, for the use of such testimony in an action against the association in this state. *State ex rel. Cook v. District Court*, 102 Mont. 424, 58 P. (2d) 273.

1936. In an action by the board of railroad commissioners to enjoin a carrier from the use of the highways by means of motor vehicles operated on a commercial basis without authorization, where he claimed the right to so operate them as a contract employee of the members of a voluntary association, the court was not authorized to find that such an arrangement was a mere subterfuge to evade the law, since the members of the association were not before it as parties. *Board of Railroad Commissioners v. Reed*, 102 Mont. 382, 58 P. (2d) 271, holding, also, that the plaintiff, if it did not know of the association at the time it instituted the suit, on the filing of the answer at the time set for the hearing, should have asked for a continuance and reframed its pleadings so as to bring in the association.

9090. When other parties must be brought in.

1937. ✓ In an action to quiet title to an oil and gas lease as against the defendant claiming under another lease, but not against the whole world, persons who had signed unit and pooling agreements with the defendant for lands in the same section were not necessary parties. *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586.

1937. ✓ A defendant held to have the right to bring in necessary parties by amended answer although he had not demurred to the complaint. *State ex rel. Chicago, M., St. P. & P. R. Co. v. District Court*, 105 Mont. 396, 73 P. (2d) 204.

1936. ✓ In an action by the board of railroad commissioners to enjoin a carrier from the use of the highways by means of motor vehicles operated on a commercial basis without authorization, where he claimed the right to so operate them as a contract employee of the members of a voluntary association, the court was not authorized to find that such an arrangement was a mere subterfuge to evade the law, since the members of the association were not before it as parties. *Board of Railroad Commissioners v. Reed*, 102 Mont. 382, 58 P. (2d) 271, holding, also, that the plaintiff, if it did not know of the association at the time it instituted the suit, on the filing of the answer at the time set for the hearing, should have asked for a continuance and reframed its pleadings so as to bring in the association.

1936. ✓ Under section 9090 the court may on its own motion order a party brought in whose presence is necessary to a complete determination of an action before it, and this power and the general power of the court to control its proceedings, is sufficient to warrant a court in refusing to allow the with-

drawal from an action of a party whose presence is necessary for a full determination of the action, unless such withdrawal is made in such a way as to be a definite and irrevocable determination of the rights of that party. *Union Bank & Trust Co. v. Bank of Townsend*, 103 Mont. 260, 62 P. (2d) 677.

CHAPTER 30

PLACE OF TRIAL OF CIVIL ACTIONS

9093. ✓ Certain actions to be tried where the subject, or some part thereof, is situated.

1938. Sections 9093 to 9104 cited in *State ex rel. Haynes v. District Court*, 106 Mont. 578, 81 P. (2d) 422.

9094. Other actions—where the cause or some part thereof arose.

1937. ✓ A cause of action to recover from the treasurer of a corporation a statutory penalty for failure to furnish a stockholder a statement of the financial affairs of a corporation on request sent by registered mail to the treasurer arose in the county where the treasurer resided, the corporation had its office and principal place of business, and where its records were kept. *Stanton Trust & Savings Bank*, 104 Mont. 235, 65 P. (2d) 1188.

9096. Other actions, according to the residence of the parties.

1938. ✓ In a divorce action evidence held to show that the defendant, at the time the action was commenced, was a resident of another county than the one in which the action was brought. *Archer v. Archer*, 106 Mont. 116, 75 P. (2d) 783.

1938. ✓ The defendant's motion for a change of venue in a divorce action, cannot be resisted on the ground of convenience of witnesses where no answer had been filed. *Archer v. Archer*, 106 Mont. 116, 75 P. (2d) 783.

1938. ✓ Where there was no conflict in the evidence as to where the defendant in a divorce action resided at the time of commencement of the action, the court had no discretion as to granting a change of venue. *Archer v. Archer*, 106 Mont. 116, 75 P. (2d) 783.

1937. ✓ An action for breach of contract to maintain neon lights held properly brought in the county in which the contract was to be performed, and change of venue from there was properly denied in *Colbert Drug Co. v. Electric Products Consolidated*, 106 Mont. 11, 74 P. (2d) 437.

1937. ✓ "May" as used in this section has been construed to mean "must." *Colbert Drug Co. v. Electric Products Consolidated*, 106 Mont. 11, 74 P. (2d) 437.

1936. ✓ Since a creditor of a city must present his warrant for the payment thereof to the city treasurer the place to sue the city is in the county in which the city is located. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

1936. ✓ In the absence of express agreement as to place of payment and where the creditor resides at a place different within the state from that of the debtor, the place of residence of the creditor becomes the place of performance, hence the place to trial in an action upon a contract as between individuals and corporations. *Lillis v. City of Big Timber*, 103 Mont. 206, 62 P. (2d) 219.

1936. ✓ In determining venue of a contract action the only question for the court's consideration is where the contract was to be performed, and in case of a tort action where the tort was committed. *Kroehnke v. Gold Creek Mining Co.*, 102 Mont. 21, 55 P. (2d) 678.

1936. ✓ The venue of an action for the repayment of money loaned is the county where the contract was to be performed. *Kroehnke v. Gold Creek Mining Co.*, 102 Mont. 21, 55 P. (2d) 678.

9097. Actions may be tried in any county, unless the defendant demands a trial in the proper county.

1939. ✓ The defendants demurred to the 3rd supplemental complaint, and noticed the demurrer for hearing and later filed a motion for a change of place of trial. Held that by invoking the action of the court on the demurrer they waived their right to a change, that the motion for a change must be made at the time defendant demurs or answers, not before nor afterwards, as the former is premature and the latter is too late. The court has no jurisdiction except to pass upon the motion for a change when properly made. *Lloyd v. National Boston-Montana Mines Corp. et al.*, Mont., 90 P. (2d) 513.

1938. ✓ Cited in *State ex rel. Haynes v. District Court*, 106 Mont. 578, 81 P. (2d) 422.

9098. Place of trial may be changed in certain cases.

1939. ✓ It was not an abuse of discretion to deny change of venue where evidence as to convenience of witnesses was evenly balanced. *Westergard v. Westergard*, Mont., 88 P. (2d) 5.

CHAPTER 31

MANNER OR COMMENCING CIVIL ACTIONS—SERVICE OF SUMMONS

Section

9111. Summons—how served—domestic corporation—foreign corporation—minor—incompetent—county, city, or town—defunct corporation—defendant personally.

9108. Alias summons—manner and time of issuing.

1939. ✓ Since a summons for publication must contain additional matter not included in original summons, it is not an alias summons, and no demand therefor is required. *Schmidt v. Schmidt*, Mont., 89 P. (2d) 1020.

9110. Summons—how served and returned.

1939. ✓ It is only in case of personal service that the summons must be returned with the sheriff's certificate of service or any other person's affidavit of service. *Schmidt v. Schmidt*, Mont., 89 P. (2d) 1020.

9111. Summons — how served — domestic corporation — foreign corporation — minor — incompetent — county, city, or town — defunct corporation — defendant personally. The summons must be served by delivering a copy thereof, as follows:

1. If the suit is against a corporation formed under the laws of this state, to the president or other head of the corporation, secretary, cashier, or managing agent thereof.

2. If the suit is against a foreign corporation, or a non-resident joint stock company or association, doing business and having a managing or business agent, cashier, or secretary within this state, to such agent, cashier or secretary, or to a person designated as provided in section 6652 of the civil code.

3. If against a minor child, residing within this state, to such minor, personally, and also to either his father, mother, or legal guardian; or, if the father, mother or legal guardian be not within this state, then to such minor, personally, and also to any person having the care, custody or control of such minor, or with whom he resides, or in whose service he is employed.

4. If against a person residing within this state, who has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such person, and also to his guardian.

5. If against a county, city or town, to the president or chairman of the board of county commissioners, president of the council or trustees, mayor, or other head of the legislative department thereof.

6. If the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation and its stockholders or members, and if none such can be found, service may be made upon the secretary of state in the manner prescribed by section 9112 of the revised codes of Montana, 1935.

7. In all other cases to the defendant personally. [L. '39, Ch. 186, § 1, amending R. C. M. 1935, § 9111, as amended by L. '37, Ch. 175, § 1. Approved and in effect March 17, 1939.]

Section 2 repeals conflicting laws.

1936. ✓ Service of notice to perpetuate testimony may be made on resident manager or agent of a foreign association doing business in Montana, for the use of such testimony in an action against the association in this state. *State ex rel. Cook v. District Court*, 102 Mont. 424, 58 P. (2d) 273.

1936. ✓ The agent of a foreign corporation need not be a resident of the state, but he must be served within the state while attending to the corporation's business. *State ex rel. Taylor Laundry Co. v. Second Judicial District Court*, 102 Mont. 274, 57 P. (2d) 772.

1936. ✓ The question of whether an agent of a foreign corporation doing business in the state is an agent upon whom summons may be served in an action against the corporation, turns upon whether

he is of such character that the law will imply the power and impute the authority of an agent to him; and, if he be that kind of an agent, the implication will be made, notwithstanding a denial of authority on the part of the officers of the corporation. *State ex rel. Taylor Laundry Co. v. Second Judicial District Court*, 102 Mont. 274, 57 P. (2d) 772.

1936. A representative of a foreign corporation who solicits sales, supervises installations, repairs, and adjustments of machinery sold in the state, is a business agent of the corporation on whom summons in action against such corporation may be made. *State ex rel. Taylor Laundry Co. v. Second Judicial District Court*, 102 Mont. 274, 57 P. (2d) 772.

1936. A foreign corporation is doing business within the state where its representative solicits sales, takes other property in part payment therefor, and makes adjustments and repairs from time to time of machinery sold in the state. *State ex rel. Taylor Laundry Co. v. Second Judicial District Court*, 102 Mont. 274, 57 P. (2d) 772.

1936. Artifice or fraud perpetrated in service on agent of foreign corporation does not invalidate the service if he was not induced to come into the state thereby. *State ex rel. Taylor Laundry Co. v. Second Judicial District Court*, 102 Mont. 274, 57 P. (2d) 772.

1936. In an action against a foreign association doing business in this state, a summons may be served on the resident manager, or agent, although the association is not a joint-stock association. *State ex rel. Cook v. District Court*, 102 Mont. 424, 58 P. (2d) 273, holding also that section 9111 is not invalid, as thus construed, as violative of the due process clause.

9117. Publication of summons.

1939. Since a summons for publication must contain additional matter not included in original summons, it is not an alias summons, and no demand therefor is required. *Schmidt v. Schmidt*, Mont., 89 P. (2d) 1020.

1939. A summons for publication was not returned, and so dead, where it was left with the clerk of court without a certificate showing what had been done, and clerk merely placed upon it his notation of filing. *Schmidt v. Schmidt*, Mont., 89 P. (2d) 1020.

9119. What summons for publication to contain.

1939. Since a summons for publication must contain additional matter not included in original summons, it is not an alias summons, and no demand therefor is required. *Schmidt v. Schmidt*, Mont., 89 P. (2d) 1020.

9122. Proof of service of summons and complaint — how made.

1939. In case of service of summons publication there is no requirement that the summons must be returned with the affidavits of publication and mailing; the requirement is merely that proof shall be made by such affidavits, and the summons so served may be identified otherwise than by annexation of the original to the affidavits. *Schmidt v. Schmidt*, Mont., 89 P. (2d) 1020.

9123. When jurisdiction of action acquired.

1938. Plaintiff, a customer at defendant store fell and was injured by tripping over an obstruction in

the aisle of the store placed there by a John Doe defendant, employee of defendant store. Action removed to federal court and by them remanded to state court. It was held that a resident defendant in a non-separable controversy anchors the case in the state court; and the non-resident defendant may not remove the suit to a federal court merely because the resident defendant has not been served with process nor voluntarily appeared in the action. *Jensen v. Safeway Stores*, 24 Fed. Supp. 585. Citing *Grosso v. Butte Electric R. Co. et al.* D. C., 217 Fed. 422; *Del Fungo Giera v. Rockland Light & Power Co. et al.*, D. C., 46 Fed. (2d) 552; *Armstrong v. Kansas City Southern R. Co. et al.*, C. C., 38 Fed. 608; *Patchin v. Hunter*, C. C. 38 Fed. 51.

9124. Return of summons.

1938. A motion to set aside a default judgment was improperly denied where there was a showing, uncontradicted by the plaintiff, that no return of service was filed with the clerk of the court by the person serving it nor any return filed within ten days after service, as required by the statute. *Madson v. Petrie Tractor & Equipment Co.*, 106 Mont. 382, 77 P. (2d) 1038.

CHAPTER 32

PLEADINGS IN GENERAL

Section

9127. What pleadings are allowed.

9127. What pleadings are allowed. The only pleadings allowed on the part of the plaintiff are:

1. The complaint;
2. The demurrer to the answer;
3. The reply to defendant's answer;
4. Any motion.

And on the part of the defendant:

1. The demurrer to the complaint;
2. The answer;
3. The demurrer to reply;
4. Any motion. [L. '37, Ch. 8, § 1, amending R. C. M. 1935, § 9127. Approved and in effect February 9, 1937.]

Section 3 repeals conflicting laws.

CHAPTER 34

DEMURRER TO COMPLAINT

9136. Objections — when deemed waived.

1938. The sufficiency of a complaint may be questioned for the first time on appeal and, if found fatally defective, a judgment for the plaintiff will be reversed. *Calkins v. Smith*, 106 Mont. 453, 78 P. (2d) 74.

CHAPTER 35

ANSWER

9137. Answer—what to contain.

1936. ✓ In the absence of plea of payment in action for wages proof of check given in payment thereof held inadmissible. *Davis v. Sullivan*, 103 Mont. 452, 62 P. (2d) 1292.

1936. ✓ Payment is new matter constituting a defense and must be pleaded to be available; it cannot be proven, under a general denial, either in bar or mitigation of recovery. *Davis v. Sullivan*, 103 Mont. 452, 62 P. (2d) 1292.

9138. Counterclaim defined.

1936. ✓ Cited in *State ex rel. Union Central Life Ins. Co. v. District Court*, 102 Mont. 371, 58 P. (2d) 491.

9146. Defendant may set forth all his defenses and counterclaims.

1937. ✓ By this statute a defendant may set forth in his answer as many defenses as he has, and these may be inconsistent. An instruction charged the jury "that the defense of contributory negligence is one which admits, or at least presupposes, negligence on the part of the defendant, and the party in fault thereby seeks to cast upon the plaintiff the consequence of his own failure to observe the precautions which the circumstances of the case demanded," was held to be correct as an abstract proposition of law, but that it is not to be approved as a proper charge in cases where a plea of contributory negligence is coupled with a denial of primary negligence. *Hazeltine v. Johnson*, 92 Fed. (2d) 866.

9151. Cross-complaint—filing—service.

1936. ✓ Where a grain company intervened in a land foreclosure suit to seek the determination of the rights of the mortgagee and mortgagor to grain, or its proceeds, grown on the land and sold by the mortgagor to the grain company, the mortgagor had the right to file a cross-complaint to the intervention complaint for the money allegedly due the mortgagor for the grain so sold. *State ex rel. Union Central Life Ins. Co. v. District Court*, 102 Mont. 371, 58 P. (2d) 491.

1936. ✓ The defendant in a foreclosure suit could file a cross-complaint to the intervention complaint of a third party where the court would thus be able to determine the ultimate rights of all the parties although the cross-complaint did not diminish or affect the relief sought by the plaintiff in the foreclosure suit. *State ex rel. Union Central Life Ins. Co. v. District Court*, 102 Mont. 371, 58 P. (2d) 491.

1936. ✓ A cross-complaint need not state a cause of action against all parties to the action in which the cross-complaint is filed. *State ex rel. Union Central Life Ins. Co. v. District Court*, 102 Mont. 371, 58 P. (2d) 491.

CHAPTER 37

REPLY

9158. What reply to contain—time for filing.

1937. ✓ Where, in action of a note, the plaintiff pleaded payment of interest by debtor within the period of the statute of limitations, he did not have

to reply to answer setting up defense of limitations, since to do so would be but a repetition of an allegation of the complaint, and an idle gesture. *Matteson v. Ackerson*, 104 Mont. 239, 66 P. (2d) 797.

CHAPTER 38

VERIFICATION OF PLEADINGS

9163. Verification of pleadings.

1936. ✓ Verification of answers and replies is not necessary to give jurisdiction to the court, and, as verification is not part of a pleading, its absence is waived by failure to object to the defect; also the defect may be cured by amendment of a pleading on file. *Chisholm v. Vocational School for Girls*, 103 Mont. 503, 64 P. (2d) 838, applying the rules to a claim for compensation under the workmen's compensation act.

CHAPTER 39

GENERAL RULES OF PLEADING

9164. Pleadings to be liberally construed.

1938. ✓ Since a pleading must be liberally construed with a view to substantial justice, whatever is necessarily implied in, or can be reasonably inferred from, an allegation is to be treated as directly averred. *State ex rel. Sadler v. Evans*, 106 Mont. 286, 77 P. (2d) 394.

1938. ✓ In mandamus against a county assessor to compel him to enter on an application for registration of an automobile the full, true, and assessed valuation thereof it was held that the writ was appropriate to compel such action and that a petition was sufficient which alleged the defendant's willful and unlawful refusal to comply with a request therefor, even though the machine was assessed to a dealer from whom the applicant purchased it. *State ex rel. Sadler v. Evans*, 106 Mont. 286, 77 P. (2d) 394.

1937. ✓ In action on a note, the complaint setting out the note in *naec verba* and endorsement showing payment of interest within the time of the statute of limitations, held sufficient to toll the statute. *Matteson v. Ackerson*, 104 Mont. 239, 66 P. (2d) 797.

1937. ✓ In determining whether a complaint states a cause of action or entitles plaintiff to any relief, matters of form are to be disregarded, as well as the allegations that are irrelevant and redundant; and if from any view the plaintiff is entitled to relief, the pleading will be sustained. *Matteson v. Ackerson*, 104 Mont. 239, 66 P. (2d) 797.

9181. Supplemental pleading.

1938. ✓ In an action to quiet title and claim and delivery of a gold mining dredge used by the lessee of a placer claim, held that the judge's action in allowing an amendment, near the close of the plaintiff's case, to show termination of the lease, in order to make the pleading conform to the proof introduced, instead of requiring the filing of a supplemental complaint, was irregular but not prejudicial. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. ✓ Section 9181 cited and applied in *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73, holding that the right to file a supplemental

pleading is not as of right, but the application to do so is addressed to the discretion of the court.

1936. ✓ In an action to foreclose lien on crops given as security for hail insurance premium notes a supplementary complaint, made necessary by defendant's actions subsequent to the filing of the original complaint, was merely an addition to the original, and both complaints were to be taken as one. *Merchants Fire Assurance Corporation v. Watson*, 104 Mont. 1, 64 P. (2d) 617.

CHAPTER 40

VARIANCES—AMENDMENTS—MISTAKES IN PLEADINGS

Section

9192. Time for amendment, answer or reply after ruling on demurrer or motion.

9183. Material variances — how provided for.

1937. ✓ Cited in *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586, holding variance immaterial in an action to quiet title to oil and gas lease, since it did not mislead the complaining party.

9187. Amendments by the court—enlarging time to plead and relieving from judgment, etc.

1939. ✓ Orders made by a court through mistake, inadvertence, want of sufficient consideration, oversight or otherwise, where they affect the substantial rights of litigants, are judicial errors and cannot be corrected or removed by summary action of the court which made them. *State ex rel. Union Bank & Trust Co. v. District Court for Lewis & Clark County et al.*, Mont., 91 P. (2d) 403.

1938. ✓ A motion to set aside a default judgment was improperly denied where there was a showing, uncontradicted by the plaintiff, that no return of service was filed with the clerk of the court by the person serving it nor any return filed within ten days after service, as required by the statute. *Madson v. Petrie Tractor & Equipment Co.*, 106 Mont. 382, 77 P. (2d) 1038.

1938. ✓ Under section 8974 a stipulation filed by an attorney under the belief that a mortgage debt was not outlawed by the statute of limitations where a renewal affidavit of the securing mortgage was filed was binding on his client, though a mistake of law. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

1938. ✓ The belief of counsel that a mortgage renewal affidavit prevented the debt from being outlawed by limitations was a mistake of law and could not be relieved under section 9187. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

1938. ✓ Relief cannot be given under section 9187 for a mistake of law in view of sections 7475, 7485-7487, 8776. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

1938. ✓ Since courts universally favor trial on the merits, slight abuse of discretion in refusing to set aside a default judgment in sufficient to justify a reversal of the order. *Madson v. Petrie Tractor & Equipment Co.*, 106 Mont. 382, 77 P. (2d) 1038.

1938. ✓ On motion to set aside a default judgment, the applicant must make a statement of facts from which the court can determine whether or not the mistake, inadvertence, surprise, or excusable neglect urged in support of it is within the contemplation of this section, in order to move the discretion of the court. *Madson v. Petrie Tractor & Equipment Co.*, 106 Mont. 382, 77 P. (2d) 1038.

1938. ✓ The power granted to the court under this section to set aside a default judgment is predicated upon the neglect of the movement, coupled with a showing of facts and circumstances which will reasonably excuse it. *Madson v. Petrie Tractor & Equipment Co.*, 106 Mont. 382, 77 P. (2d) 1038.

1938. ✓ An application for relief granted by this section must be made with diligence. *Madson v. Petrie Tractor & Equipment Co.*, 106 Mont. 382, 77 P. (2d) 1038.

1938. ✓ Where counsel for the defendant, upon being unable to find the summons in an action and copy of the complaint in the papers delivered to him by the defendant, made further search for such documents and thereafter inspected the docket of the action in the office of the clerk of the court, the place where he had a right to find whether any return had been made within the ten days provided by the statute, showing that defendant had been served, such showing was held sufficient to warrant a reversal of a default judgment. *Madson v. Petrie Tractor & Equipment Co.*, 106 Mont. 382, 77 P. (2d) 1038.

1938. ✓ A motion to set aside a default judgment is addressed to the sound discretion of the court, with which the supreme court will not interfere except upon a showing of manifest abuse of such discretion, but such judgments are not favored, and the trial court on passing upon such a motion should exercise the same liberal spirit which prompted the legislature in enacting this section. *Madson v. Petrie Tractor & Equipment Co.* 106 Mont. 382, 77 P. (2d) 1038.

1938. ✓ Where an attorney filed a stipulation under mistake of law a refusal to set aside a resulting judgment was proper, despite the client's claim that the attorney had no authority to make the stipulation, in the absence of a showing of lack of express authority of the attorney to do what he did. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

1938. ✓ In an action to foreclose a mortgage the neglect of attorney to make inquiry as to payments on debt, so as to keep it alive, was held not ground for setting resulting judgment in the absence of showing of excuse for the neglect. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

1938. ✓ An application to set aside a judgment on motion is addressed to the discretion of the trial court, and its action thereon, in the absence of manifest abuse of discretion, will not be disturbed on appeal. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

1938. ✓ Each application to set aside a judgment must be determined by its own facts. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

1937. ✓ The supreme court will not reverse the trial court for allowing the plaintiff to file an amended complaint in the absence of an affirmative showing of abuse of its discretion resulting in prejudice to the adverse party. *Hatch v. National Surety Corporation*, 105 Mont. 245, 72 P. (2d) 107.

1937. ✓ Where defendant in suit on injunction bond did not object to testimony which was variance from complaint, or move for nonsuit, or request continuance to meet the proof, his objection to an

amendment of the complaint to make it conform to the proof, came too late after both parties had rested, and amendment was properly allowed. *Hatch v. National Surety Corporation*, 105 Mont. 245, 72 P. (2d) 107.

1936. ✓ Defaulted defendant, who did not learn of the default within the statutory time to open, by no fault of his own, did not have to pursue his legal remedy as condition precedent to seeking equitable relief, especially where motion under this section was not as adequate as equitable procedure. *Stocking v. Charles Beard Co.*, 102 Mont. 65, 55 P. (2d) 949.

1936. ✓ Evidence in action to set aside default held not to show negligence of plaintiff in failing to discover entry of default judgment within statutory time to open and set aside. *Stocking v. Charles Beard Co.*, 102 Mont. 65, 55 P. (2d) 949.

1936. ✓ In an action to open a default the refusal of the court to find that the plaintiff had notice of the default entry and judgment held not error in view of the evidence. *Stocking v. Charles Beard Co.*, 102 Mont. 65, 55 P. (2d) 949.

1936. ✓ A complaint in an action to set aside a default alleging that the plaintiff's default occurred after the assurance by the attorney for the plaintiff, in an action against the defaulted plaintiff on an account, that the plaintiff need not answer such action as long as he made payments on the indebtedness, and that the plaintiff had no knowledge of the default until six months after it had been entered against him, stated a good cause of action to open the default. *Stocking v. Charles Beard Co.*, 102 Mont. 65, 55 P. (2d) 949.

1936. ✓ A motion to set aside a default judgment, authorized by section 9187, and recognized as applying to a judgment in the justice court by section 9755, is akin to, or in effect, a motion for a new trial. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

1935. ✓ An application to amend a pleading is addressed to the discretion of the trial court, and the supreme court will disturb the action of the trial court only on a showing of abuse of that discretion. *Granger v. Erie*, 101 Mont. 170, 53 P. (2d) 443, holding no abuse shown in denying motion to file amended answer 54 days after the striking of the original answer where no showing was made as to reason why the information necessary to answer could not have been obtained sooner, and no extension of time was asked.

9190. Suing a party by a fictitious name—when allowed—use of initials.

1938. ✓ Plaintiff, a customer at defendant store fell and was injured by tripping over an obstruction in the aisle of the store placed there by a John Doe defendant, employee of defendant store. Action removed to federal court and by them remanded to state court. It was held that a resident defendant in a non-separable controversy anchors the case in the state court; and the non-resident defendant may not remove the suit to a federal court merely because the resident defendant has not been served with process nor voluntarily appeared in the action. *Jensen v. Safeway Stores*, 24 Fed. Supp. 585. Citing *Grosso v. Butte Electric R. Co. et al.* D. C., 217 Fed. 422; *Del Fungo Giera v. Rockland Light & Power Co. et al.*, D. C., 46 Fed. (2d) 552; *Armstrong v. Kansas City Southern R. Co. et al.*, C. C., 38 Fed. 608; *Patchin v. Hunter*, C. C. 38 Fed. 51.

9191. No error or defect to be regarded unless it affects substantial rights.

1939. ✓ On appeal, prejudice is never presumed, and a judgment will not be reversed merely because the lower court erred; in order to work a reversal it must affirmatively appear that the error has affected substantial rights of appellant on the merits of the case. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

1939. ✓ Where there was sufficient evidence in record to support the trial court's findings erroneously admitted testimony over objection was disregarded by the supreme court on appeal. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

1937. ✓ In action against the driver of an automobile the complaint held to sufficiently allege defendant's gross negligence, as amended to conform to proof. *Baatz v. Noble*, 105 Mont. 59, 69 P. (2d) 579.

1937. ✓ Where, in an action on a fraternal insurance policy, the complaint did not plead an incontestable clause in the policy, but the defendant offered the policy in evidence without objection, the complaint was deemed amended to admit the proof necessary to sustain the judgment for the plaintiff. *Stevens v. Woodmen of the World*, 105 Mont. 121, 71 P. (2d) 898.

1937. ✓ Applied in case of a ruling of the trial court requiring the defendant to proceed with his evidence on a hearing to show cause why a restraining order issued against him should be continued. *Gibbons v. Huntsinger*, 105 Mont. 562, 74 P. (2d) 443.

1937. ✓ Where the counsel for the defendant in an action for injuries sustained by guests riding in an automobile belonging to a partner of the defendant partnership, alleged to have been caused by the gross negligence of the defendant's employee driver, remarked in argument that a verdict against the defendant would work irreparable damage to the defendant and practically put it out of business, and the plaintiff's lawyer stated in reply that the defendant might be insured, such statement was held not to justify a reversal of judgment for the plaintiff, where the trial judge admonished the jury to disregard the remarks, and the verdict was not excessive. *Doheny v. Coverdale*, 104 Mont. 534, 68 P. (2d) 142.

9192. Time for amendment, answer or reply after ruling on demurrer or motion. When a demurrer or motion to any pleading is sustained or overruled, and time to amend, answer, or reply is given, the time so given runs from service of notice of the decision or order, except when the party against whom the decision is made is in court. In such case the time runs from the making of the decision or order. [L. '37, Ch. 8, § 2, amending R. C. M. 1935, § 9192. Approved and in effect February 9, 1937.]

Section 3 repeals conflicting laws.

CHAPTER 41

ARREST AND BAIL

9212. Deposit of money instead of bail.

1935. Evidence held insufficient to justify a belief that compensation could be reduced because of the possibility that claimant could obtain and perform some less remunerative light work. *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

CHAPTER 42

CLAIM AND DELIVERY OF PERSONAL PROPERTY

9235. Papers to be filed.

1936. In action by widow of employee against hospital which had made contract with the employer, under the provisions of the compensation act, to care for employees, for refusal to care for employee, it was error for the court to submit to the jury the question whether such refusal was in violation of the contract, since that was a question of law. *Sample v. Murray Hospital*, 103 Mont. 195, 62 P. (2d) 241, holding defendant's objections to such submission were sufficient to call the court's attention to the error, and refusing to remand the case with directions to dismiss the action since the question of law was one made so by statute and imposed on the trial the duty to try out the case on the evidence, which he was in a better position to do than the supreme court.

CHAPTER 43

INJUNCTION

9243. Injunction order—when granted.

1935. State statute which denies the right of injunctive relief during the pendency of a suit for rate revision by order of Utility Commission held violative of provisions of the United States constitution but held that the federal court did not have jurisdiction to enjoin the rate order of the State Public Service Commission. *Montana Power Co. v. Public Service Commission*, 12 Fed. Supp. 946.

9245. When notice required.

1937. The court has jurisdiction to grant a restraining order to preserve conditions in status quo for a reasonable time until a hearing can be had on notice for an injunction pendente lite, but has no jurisdiction without notice to attempt to make an order pendente lite where a disputed title and ownership of property is the basis of the rights of the parties litigant. *State ex rel. Cook v. District Court*, 105 Mont. 72, 69 P. (2d) 746.

1937. In a contempt case it was held that, treating an order as a temporary restraining order, it was effective to preserve the status quo for a reasonable time necessary to enable notice to be given for a hearing as to whether it should be effective pendente lite, but it could not be effective pendente lite without notice or hearing, and after the lapse of a reasonable time the restraining order had spent its force, the same as if an order to show cause had issued and neither party appeared at the time fixed for hearing; the court refusing to punish for an

alleged contempt committed nearly five years after the injunction was issued and long after its efficacy as a restraining order had ceased. *State ex rel. Cook v. District Court*, 105 Mont. 72, 69 P. (2d) 746.

1937. It is the duty of the court, upon granting a temporary restraining order without notice, to set the matter for hearing for an injunction pendente lite at a very early date, to the end that a temporary expedient may not, in fact, become an injunction. *State ex rel. Cook v. District Court*, 105 Mont. 72, 69 P. (2d) 746.

1937. Cited in *State ex rel. Cook v. District Court*, 105 Mont. 72, 69 P. (2d) 746, holding that when a temporary restraining order is issued there can be no possibility of injury during the time required to give notice for an injunction pendente lite.

1937. A temporary restraining order may be granted without notice, but in no case shall an injunction order or restraining order be issued without notice, unless it appears to the court or judge that irreparable injury would result by the delay of giving notice. *State ex rel. Cook v. District Court*, 105 Mont. 72, 69 P. (2d) 746.

9246. Security upon injunction.

1937. Under this section the statute and the undertaking together constitute the contractual liability of the surety. *Hatch v. National Surety Corporation*, 105 Mont. 245, 72 P. (2d) 107.

1937. The surety on the undertaking is liable where the plaintiff has voluntarily discontinued the suit or consented to its dismissal. *Hatch v. National Surety Corporation*, 105 Mont. 245, 72 P. (2d) 107.

9247. Order to show cause.

1936. Since section 2214 makes no provision for the filing of any pleading in response to an order to show cause, the practice provided for in injunction cases would seem to be proper, section 9247, and in response to an order to show cause why the plaintiff should not pay into court taxes levied on land sold for taxes before being entitled to maintain an action to quiet title against a purchaser at a tax sale, on ground of illegality of the levy, such plaintiff may show cause either by an appropriate sworn pleading, or by oral testimony, and any affidavit sufficient as a defense is sufficient to show cause. *State ex rel. Jensen v. District Court*, 103 Mont. 461, 64 P. (2d) 835.

CHAPTER 44

ATTACHMENT

Section

- 9262.1. Corporation stock — attachment—additional method — officers — nonresidents or cannot be found in state—affidavit — service of writ on secretary of state.
- 9262.2. Same—secretary of state—duty—fee.

9256. When attachment may issue.

1938. An affidavit for attachment was held not insufficient because it did not negative the existence of any other security than a worthless mortgage set out in the affidavit. *Bailey v. Hansen*, 105 Mont. 552, 74 P. (2d) 438.

1937. Where a mortgagor represented fraudulently to the plaintiff mortgagee that there was no mortgage ahead of his mortgage, though there was such a mortgage recorded, the plaintiff was entitled to

prove the valuelessness of his mortgage and to attach the property of the mortgagor because of such valuelessness without first foreclosing, though seven years had elapsed before he brought the action wherein the affidavit for attachment was filed. *Bailey v. Hansen*, 105 Mont. 552, 74 P. (2d) 438.

1937. ✓ Section 9467 does not prohibit a personal action when the security has become valueless, and it is no bar to a personal action in all cases even though the act of the mortgagee may have caused the security to become valueless, and furthermore, to prove that the security has become valueless it would not be necessary to first foreclose the mortgage, and that same rule applies to the right to levy an attachment. *Bailey v. Hansen*, 105 Mont. 552, 74 P. (2d) 438.

1937. ✓ A motion to discharge an attachment must specifically point out the objection relied upon, so that the opposite party may answer the objection. *Bailey v. Hansen*, 105 Mont. 552, 74 P. (2d) 438.

9261. Property subject to attachment.

1935. A cause of action for personal injuries is not subject to attachment, since neither chose in action, credit or debt, such as may be classed as personal property within the meaning of sections 9424, 9276, or 9267. *Coty v. Cogswell*, 100 Mont. 496, 50 P. (2d) 249.

9262.1. Corporation stock — attachment — additional method — officers — nonresidents or cannot be found in state—affidavit—service of writ on secretary of state. In addition to the method prescribed in paragraph 4 of section 9262 of the revised codes of Montana, 1935, for attaching stocks or shares or interest therein of any corporation or company, if the president or other head of the same or the secretary, cashier, or other managing agent thereof does not live in Montana or can not be found within the said state and an affidavit is filed in the office of the clerk of the court in which the action is pending setting forth that the above named officers or managing agent of said corporation does not live or can not be found within the state the clerk of the court shall make an order directing the writ to be served upon the secretary of state of the state of Montana or in his absence from his office, upon the deputy secretary of state of Montana. When such order has been made the said writ of attachment shall be served upon the secretary of state or in his absence upon the deputy secretary of state by leaving with him a copy of said writ and a notice that the stock or interest therein of the defendant is attached in pursuant [pursuance] of such writ. [L. '37, Ch. 128, § 1. Approved and in effect March 15, 1937.

9262.2. Same — secretary of state — duty—fee. Upon such service being so made upon the secretary of state or his deputy the said secretary of state or his deputy shall promptly mail the copy of the writ, notice and copy of said order by registered mail to the address of

such corporation at its principal home office as shown by the papers on file in the office of secretary of state and shall make out and mail to the clerk of the court in which the action is pending a certificate of such mailing which shall have attached thereto the registry receipt for such letter that such attachment so made upon the secretary of state as herein provided shall be effective and the said stock or shares or the interest therein of the defendant shall be attached upon the service of the said writ as herein provided. At the time of the service of said writ there shall be paid to the secretary of state a fee of two (\$2.00) dollars which shall be by him paid into the state treasury and which may be taxed as cost by the plaintiff. [L. '37, Ch. 128, § 2. Approved and in effect March 15, 1937.

9267. Garnishment—when garnishee liable to plaintiff.

1935. Cited in *Toole v. Paumie Parisian Dye House*, 101 Mont. 74, 52 P. (2d) 162.

1935. ✓ Tort claim not reduced to judgment is not a debt within the meaning of this section. *Coty v. Cogswell*, 100 Mont. 496, 50 P. (2d) 249.

1935. ✓ A cause of action for personal injuries is not subject to attachment, since neither chose in action, credit or debt, such as may be classed as personal property within the meaning of sections 9424, 9276, or 9267. *Coty v. Cogswell*, 100 Mont. 496, 50 P. (2d) 249.

9276. If plaintiff obtains judgment, how satisfied.

1935. ✓ A cause of action for personal injuries is not subject to attachment, since neither chose in action, credit or debt, such as may be classed as personal property within the meaning of sections 9424, 9276, or 9267. *Coty v. Cogswell*, 100 Mont. 496, 50 P. (2d) 249.

CHAPTER 48

JUDGMENT IN GENERAL

9313. Judgment defined.

1939. ✓ The decisions or findings of a court, referee, or committee do not constitute a judgment, but merely form the basis upon which the judgments are subsequently to be rendered. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

1939. ✓ In equity suit plaintiff's notice of cross-appeal was timely filed, where filed within statutory time after judgment signed by court and filed by clerk, though clerk had previously entered court's findings and conclusions of law as ministerial act, since latter did not constitute final judgment. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

1938. ✓ Where the court denied a divorce, on the ground that the petitioner had not proved residence in the state, but did not dismiss the case, or order it dismissed, there was no final judgment from which appeal could be taken. *State ex rel. Duckworth v. District Court*, 107 Mont. 97, 80 P. (2d) 367.

1936. ✓ Where a motion for a new trial, authorized by law, is made within time, the judgment entered, and on which otherwise an execution might issue, is not final until the motion is disposed of, and the period for appeal does not begin to run until the motion is denied. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

1936. ✓ Although a judgment is defined as the final determination of the rights of the parties to an action or proceeding, the action must be regarded as still pending within the meaning of the section until final determination on appeal, or until the time for appeal has passed. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

1936. ✓ District court's order dismissing appeal from justice of the peace was final judgment, disentitling appellant to writ of supervisory control, where appeal had been taken and abandoned and time for appeal had elapsed when application for writ was made. *State ex rel. Meyer v. District Court*, 102 Mont. 222, 57 P. (2d) 778.

1936. ✓ A judgment is a final determination of the rights of the parties to an action. If an order has the effect of finally determining the rights of the parties, in other words, disposed of the case finally, it is a "judgment," the "title of the instrument" being not conclusive; it is to be judged by its contents and substance. *State ex rel. Meyer v. District Court*, 102 Mont. 222, 57 P. (2d) 778.

9314. Execution against principal debtor before surety may be directed in judgment—judgment may be for or against one of the parties.

1936. ✓ The defendant in a foreclosure suit could file a cross-complaint to the intervention complaint of a third party where the court would thus be able to determine the ultimate rights of all the parties although the cross-complaint did not diminish or affect the relief sought by the plaintiff in the foreclosure suit. *State ex rel. Union Central Life Ins. Co. v. District Court*, 102 Mont. 371, 58 P. (2d) 491.

9317. Action may be dismissed or nonsuit entered.

1939. ✓ Judgment in suit to determine ownership of mill sites, which was dismissed on merits without hearing evidence, was held not *res judicata* of later suit to try title to tailings on such sites. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

1938. ✓ In a former suit plaintiff brought an action for damages accruing to him by acts of the defendant. Judgment in that case was rendered in favor of the plaintiff in the amount of \$1.00. Plaintiff brought another suit in which the former action was pleaded as *res adjudicata*. Held, that the former suit was a judgment on the merits and *res adjudicata* under the existing statutes. *Dern v. Tanner*, 96 Fed. (2d) 401.

1936. ✓ Under section 9090 the court may on its own motion order a party brought in whose presence is necessary to a complete determination of an action before it, and this power and the general power of the court to control its proceedings, is sufficient to warrant a court in refusing to allow the withdrawal from an action of a party whose presence is necessary for a full determination of the action, unless such withdrawal is made in such a way as to be a definite and irrevocable determination of the rights of that party. *Union Bank & Trust Co. v. Bank of Townsend*, 103 Mont. 260, 62 P. (2d) 677.

1936. ✓ Where claimant under bank cashier's check discontinued action against bank, but not against indorser's, the bank's petition for interpleader should, on deposit of check in court, have been treated as original complaint under second portion of section 9087. *Union Bank & Trust Co. v. Bank of Townsend*, 103 Mont. 260, 62 P. (2d) 677.

1936. ✓ A motion for dismissal comes too late when made after a motion for a directed verdict has been made and submitted. *State ex rel. Barclay Motors, Inc. v. District Court*, 102 Mont. 503, 59 P. (2d) 45.

1936. ✓ On appeal from an order of the trial court refusing to set aside an order dismissing a complaint the supreme court presumed that the order was entered on the clerk's register, where the matter was not submitted to the court, as no objection was made that this was not done, though it would have been better to submit the matter to the judge. *Union Bank & Trust Co. v. State Bank of Townsend*, 103 Mont. 260, 62 P. (2d) 677.

1936. ✓ The filing of a praecipe for dismissal by the plaintiff and the formal entry of the dismissal by the clerk in his register completes the dismissal, without any action of the judge of the court. *Union Bank & Trust Co. v. State Bank of Townsend*, 103 Mont. 260, 62 P. (2d) 677.

1936. ✓ A dismissal under subdivision 1 of section 9371 is without prejudice to the bringing of another action on the same facts. *Union Bank & Trust Co. v. State Bank of Townsend*, 103 Mont. 260, 62 P. (2d) 677.

1935. ✓ After the plaintiff has filed with the clerk a praecipe for the dismissal of an action and directed the clerk to enter dismissal on the register of actions the case is dismissed and has passed entirely beyond the jurisdiction of the court except for the purpose of entering a judgment for costs in favor of the defendant if he so demands. *Graham v. Superior Mines*, 100 Mont. 427, 49 P. (2d) 443.

1935. ✓ Under this section the plaintiff may obtain dismissal by making a motion to the court and taking the order which, when entered, should be noted by the clerk in the register of actions. *Graham v. Superior Mines*, 100 Mont. 427, 49 P. (2d) 443.

9318. All other judgments are on the merits.

1939. ✓ Judgment in suit to determine ownership of mill sites, which was dismissed on merits without hearing evidence, was held not *res judicata* of later suit to try title to tailings on such sites. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

1938. ✓ In a former suit plaintiff brought an action for damages accruing to him by acts of the defendant. Judgment in that case was rendered in favor of the plaintiff in the amount of \$1.00. Plaintiff brought another suit in which the former action was pleaded as *res adjudicata*. Held, that the former suit was a judgment on the merits and *res adjudicata* under the existing statutes. *Dern v. Tanner*, 96 Fed. (2d) 401.

1936. ✓ A dismissal under subdivision 1 of section 9371 is without prejudice to the bringing of another action on the same facts. *Union Bank & Trust Co. v. State Bank of Townsend*, 103 Mont. 260, 62 P. (2d) 677.

9320. Effect of judgment dismissing complaint.

1939. ✓ Judgment in suit to determine ownership of mill sites, which was dismissed on merits without hearing evidence, was held not *res judicata* of later

suit to try title to tailings on such sites. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

1938. In a former suit plaintiff brought an action for damages accruing to him by acts of the defendant. Judgment in that case was rendered in favor of the plaintiff in the amount of \$1.00. Plaintiff brought another suit in which the former action was pleaded as *res adjudicata*. Held, that the former suit was a judgment on the merits and *res adjudicata* under the existing statutes. *Dern v. Tanner*, 96 Fed. (2d) 401.

1936. The refusal of the court to admit a judgment roll showing a nonsuit in a prior action on the same cause, to support the defendant's plea of *res adjudicata*, was not error where the roll did not expressly declare that the judgment was on the merits, nor it did not so appear therefrom, since a judgment of nonsuit is not a judgment on the merits, and nothing short of a judgment on the merits can prevent a new action. *McCulloch v. Horton*, 102 Mont. 135, 56 P. (2d) 1344.

CHAPTER 49

JUDGMENT BY DEFAULT

Section

9322. In what cases judgment by default may be entered—actions on contract—other actions—actions where summons was served by publication—defendant's consent to entry of default.

9322. In what cases judgment by default may be entered—actions on contract—other actions—actions where summons was served by publication—defendant's consent to entry of default. Judgment may be had, if the defendant fails to answer the complaint or to challenge the jurisdiction of the court, as follows:

1. In an action arising upon contract for the recovery of money or damages only, if no answer, demurrer, motion, or special appearance, coupled with a motion, has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, or no motion to quash or set aside the service of summons, or to challenge the jurisdiction of the court, has been made and filed, the clerk, upon application of the plaintiff, must enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the complaint, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section 9121.

2. In other actions, if no answer, demurrer, motion, or special appearance, coupled with a motion, has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted,

or within twenty days after a motion to quash or set aside the service of summons, or any motion challenging the jurisdiction of the court, has been denied, the clerk must enter the default of the defendant; and thereafter the plaintiff may apply for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof; or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account be involved, by a reference, as above provided.

3. In an action where the service of summons was by publication, the plaintiff, upon the expiration of the time for answering, may, upon proof of the publication, and that no answer or motion to quash or set aside the service of summons, or motion to challenge the jurisdiction of the court, has been filed, apply for judgment; and the court must thereupon require proof to be made of the demand mentioned in the complaint; and if the defendant be not a resident of the state, must require the plaintiff, or his agent, to be examined on oath respecting any payments that may have been made to the plaintiff, or to anyone for his use, on account of such demand, and may render judgment for the amount for which he is entitled to recover.

4. At any time within twenty days after the service of summons upon a defendant in any action commenced in any district court of this state, the defendant may, in writing acknowledged before a notary public, or judge or clerk of the district court, waive his time and right to demur, answer, or otherwise plead to the complaint in the action and consent and agree that his default for failure to demur, answer or otherwise plead to the complaint be entered by the court and that judgment may be rendered and caused to be entered against him by the court in accordance with the prayer of the complaint; whereupon, proof having first been made to the court as required by law, the court shall be authorized to render and enter judgment in favor of the plaintiff and against the defendant in the action in accordance with the prayer of the complaint. Such waiver shall be filed in the action and be made a part of the judgment roll therein. [L. '39, Ch. 28, § 1, amending R. C. M. 1935, § 9322. Approved and in effect February 15, 1939.

Section 2 repeals conflicting laws.

CHAPTER 50

ISSUES—THE MODE OF TRIAL AND POSTPONEMENTS

Section

9327. Issues of fact—how tried—when issues both of law and fact, the former to be first disposed of—pre-trial procedure by the court in formulating issues in civil actions.

9325. Issue of law—how tried.

1936. It could not be said that a litigant referred a matter to the jury by consent where he made elaborate objections to the instructions of the court, whatever their nature. *Sample v. Murray Hospital*, 103 Mont. 195, 62 P. (2d) 241.

9326. Issue of fact—how raised.

1935. When the parties to a suit have filed all their pleadings and pleading has ended, the case is at issue, but when the answer contains an affirmative defense or new matter, to which the plaintiff has not replied, the case is not an issue. *Roush v. District Court*, 101 Mont. 166, 53 P. (2d) 96.

9327. Issues of fact—how tried—when issues both of law and fact, the former to be first disposed of—pre-trial procedure by the court in formulating issues in civil actions. In actions for the recovery of specific real or personal property, with or without damages, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered, as provided in this code. Where in these cases there are issues both of law and fact, the issue of law must be first disposed of. In other cases, issues of fact must be tried by the court, subject to its power to order any such issue to be tried by a jury, or to be referred to a referee, as provided in this code.

In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) The advisability of a preliminary reference of issues to a referee for findings to be used as evidence when the trial is to be by jury;
- (6) Such other matters as may aid in the disposition of the action.

The court may make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agree-

ments made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions. [L. '39, Ch. 61, § 1, amending R. C. M. 1935, § 9327. Approved and in effect February 24, 1939.

Section 2 repeals conflicting laws.

1936. Cited in *Merchants Fire Assurance Corporation*, 104 Mont. 1, 64 P. (2d) 617.

9329. Counterclaim to be deemed an action within the meaning of foregoing sections.

1935. Presumptions 1, 19 and 20 of section 10606 applied to alleged negligence of pledgee in regard to collateral given in pledge, and burden was on pledgor to prove such negligence in support of his counterclaim. *Rock Island Plow Co. v. Cut Bank Implement Co.*, 101 Mont. 117, 53 P. (2d) 116.

9330. Clerk must enter cause on the calendar, to remain until disposed of.

1935. When the parties to a suit have filed all their pleadings and pleading has ended, the case is at issue, but when the answer contains an affirmative defense or new matter, to which the plaintiff has not replied, the case is not an issue. *Roush v. District Court*, 101 Mont. 166, 53 P. (2d) 96.

CHAPTER 51

TRIAL BY JURY—FORMATION OF THE JURY

Section

9334. Judge to draw capsules containing ballot.

9335. Mode of drawing capsules containing ballot.

9341. Ballots—when drawn from box No. 3.

9334. Judge to draw capsules containing ballot. When an issue of fact to be tried by a jury is brought to trial, the district judge in the presence of the clerk of the court must openly draw out of the trial juror box as many of the capsules containing ballots, with the names of jurors thereon, one after another, as are sufficient to form a jury. [L. '39, Ch. 3, § 3, amending R. C. M. 1935, § 9334, as amended by L. '37, Ch. 151, § 3. Approved and in effect February 7, 1939.

Section 6 repeals conflicting laws.

Note. That the last sentence of this section, as it appears in the laws of 1937, is omitted from this amendment.

1938. Cited in *Ledger v. McKenzie*, 107 Mont. 335, 85 P. (2d) 352.

9335. Mode of drawing capsules containing ballot. Before the first capsule containing a ballot shall have been drawn, the box must be closed and well shaken, so as to thoroughly mix the capsules therein; and the district judge must draw a capsule containing a ballot with the juror's name thereon, through an aperture made in the lid large enough only to admit his hand conveniently, and without said judge gazing into said box before or while drawing said capsule. [L. '39, Ch. 3, § 4, amending R. C. M. 1935, § 9335, as amended by L. '37, Ch. 151, § 4. Approved and in effect February 7, 1939.]

Section 6 repeals conflicting laws.

9341. Ballots—when drawn from box No. 3 If a sufficient number of jurors duly drawn and notified do not attend to form a jury, or a jury is impaneled to another cause and not discharged, the district judge shall pursuant to an order to be entered in the minutes, in the presence of the clerk of the court draw a sufficient number of ballots from box No. 3, specified in section 8907, of this code, to complete the jury. The sheriff must notify the persons thus drawn to attend forthwith, or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified, under an order made as prescribed in this section, the court may make another order, or successive orders, until a sufficient number is obtained. Each person so notified must attend at a time required by the notice, and unless excused by the court or set aside, must serve as a juror upon the trial. For a neglect or refusal so to do, he may be fined in the same manner as a trial juror regularly drawn and notified, as prescribed in this code; and he is subject to the same exceptions and challenges as any other trial juror. [L. '39, Ch. 3, § 5, amending R. C. M. 1935, as amended by L. '37, Ch. 151, § 5. Approved and in effect February 7, 1939.]

Section 6 repeals conflicting laws.

1938. Cited in *Ledger v. McKenzie*, 107 Mont. 335, 85 P. (2d) 352.

9343. Challenge.

1938. The rule that a party waives his right to challenge for cause if he does not challenge before the jury is sworn, if he has the means of knowledge of cause, applies to a challenge of the panel or array. *Ledger v. McKenzie*, 107 Mont. 335, 85 P. (2d) 352, holding that such knowledge was at counsel's command where the minutes of the court clearly showed that special panel not drawn in accordance with the statute.

9344. Challenges for cause.

1935. Challenger must state specific ground mentioned in statute relied upon. *Simons v. Jennings*, 100 Mont. 55, 46 P. (2d) 704.

1935. Where no abuse of discretion of court in passing upon juror's qualification is shown on appeal his decision on the matter will not be reviewed. *Simons v. Jennings*, 100 Mont. 55, 46 P. (2d) 704.

1935. Juror held not disqualified on ground that he had heard some of testimony in previous trial where he had no opinion as to who should prevail, did not remember such testimony, and could try case impartially. *Simons v. Jennings*, 100 Mont. 55, 46 P. (2d) 704.

1934. "If a defendant does not avail himself of the privilege of examining into the qualifications of prospective jurors before the jury is sworn, he may not assign a juror's incompetency as ground for a new trial, even though his knowledge of the incompetency comes to him for the first time after the trial." *Stagg v. Stagg*, 96 Mont. 573, 32 P. (2d) 856. See, also, *State v. Hoffman*, 94 Mont. 573, 23 P. (2d) 972, and *State v. Danner*, 70 Mont. 517, 226 P. 475.

CHAPTER 52

CONDUCT OF THE TRIAL

9349. Order of trial.

1935. Where objection to an instruction is not made at the time of settling it is not available on motion for a new trial or on appeal. *Brennan v. Mayo*, 100 Mont. 439, 50 P. (2d) 245.

9359. Proceedings when verdict is informal.

1937. Section applied where two defendants were charged, but only one tried, and verdict was corrected to show that the one tried was found guilty. *State v. Semmens*, 105 Mont. 113, 71 P. (2d) 913.

CHAPTER 53

THE VERDICT

9361. When a general or special verdict may be rendered.

1937. Whether a general or special verdict is to be returned is a matter addressed to the sound discretion of the trial judge. *Hatch v. National Surety Corporation*, 105 Mont. 245, 72 P. (2d) 107.

1937. Where several plaintiffs sued on an injunction bond and the total amount of damages due plaintiffs was a matter of mathematical computation the refusal to submit a proposed verdict awarding specific damages to each plaintiff was erroneous in the absence of prejudice to the surety. *Hatch v. National Surety Corporation*, 105 Mont. 245, 72 P. (2d) 107.

CHAPTER 54

TRIAL BY THE COURT

9366. Upon trial by court, decision to be in writing and filed within twenty days.

1939. In equity suit plaintiff's notice of cross-appeal was timely filed, where filed within statutory time after judgment signed by court and filed by clerk, though clerk had previously entered court's

findings and conclusions of law as ministerial act, since latter did not constitute final judgment. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

9367. Facts found and conclusions of law must be separately stated—judgment on.

1939. Mere findings of fact and conclusions of law do not constitute a judgment. *State ex rel. King v. District Court*, 107 Mont. 476, 86 P. (2d) 755.

1939. ✓ In equity suit plaintiff's notice of cross-appeal was timely filed, where filed within statutory time after judgment signed by court and filed by clerk, though clerk had previously entered court's findings and conclusions of law as ministerial act, since latter did not constitute final judgment. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

9369. Want of findings — judgment not reversed.

1937. ✓ The rules set out in sections 9369 and 9370 held to have no application where the findings of the trial court are attacked for what they declare, and insufficiency of the evidence to support them, and not for absence of findings and defective findings, that is, omissions—issues raised which are not decided by the findings, which are the matters dealt with in the above sections. *Atlantic Pacific Oil Co. of Montana v. Gas Development Co.*, 105 Mont. 1, 69 P. (2d) 750.

9370. Exception for defective findings — particular defect to be pointed out.

1937. ✓ The rules set out in sections 9369 and 9370 held to have no application where the findings of the trial court are attacked for what they declare, and insufficiency of the evidence to support them, and not for absence of findings and defective findings, that is, omissions—issues raised which are not decided by the findings, which are the matters dealt with in the above sections. *Atlantic Pacific Oil Co. of Montana v. Gas Development Co.*, 105 Mont. 1, 69 P. (2d) 750.

9371. Exceptions to be filed and served on opposite party.

1936. After the supreme court has annulled a judgment of the trial court and remanded the case with directions to allow the defendant to amend his answer, proceed with the case, hear new evidence, and revise findings, in accordance with the directions of the supreme court, the plaintiff cannot dismiss the action. *State ex rel. Butte-Los Angeles Mining Co. v. District Court*, 103 Mont. 140, 61 P. (2d) 828.

9372. Trial upon agreed statement of facts.

1938. ✓ Under section 8974 a stipulation filed by an attorney under the belief that a mortgage debt was not outlawed by the statute of limitations where a renewal affidavit of the securing mortgage was filed was binding on his client, though a mistake of law. *Rieckhoff v. Woodhull*, 106 Mont. 22, 75 P. (2d) 56.

1938. ✓ Where the court was acting within its jurisdiction its error in basing its conclusion on findings contrary to facts stipulated by the parties cannot be reviewed by writ of review, since that remedy is available only where the court acts without its jurisdiction. *State ex rel. Nelson v. District Court*, Mont., 81 P. (2d) 699, holding the proper remedy in such a case to be a writ of supervisory control. *State ex rel. Nelson v. District Court*, 107 Mont. 167, 81 P. (2d) 699.

1938. ✓ In *state ex rel. Nelson v. District Court*, 107 Mont. 167, 81 P. (2d) 699, it was held that the court erred in not following a stipulation made by the parties, but made special findings contrary thereto.

1938. ✓ In a controversy involving the right to a contract of purchase of real estate it was held that the court was bound to make its conclusion on a certain stipulation entered into by the parties in so far as the facts necessary were agreed upon. As to the facts not stipulated upon it could refer to the evidence for their determination. *State ex rel. Nelson v. District Court*, 107 Mont. 167, 81 P. (2d) 699.

1938. ✓ An agreed statement of facts consisting of an agreement to consider as true certain allegations in the defendants' answer and that the trial court should consider certain documentary evidence, held to automatically become the court's findings and have the effect of a special verdict as to the facts agreed upon. *State ex rel. Nelson v. District Court*, 107 Mont. 167, 81 P. (2d) 699.

CHAPTER 56

PROVISIONS RELATING TO TRIALS IN GENERAL—EXCEPTIONS

9390. Exceptions not presented at time of ruling—notice to adverse party, how settled upon, etc.

1939. ✓ Bill of exceptions prepared within extension of time granted while motion for new trial was pending held timely. *Pierce v. Pierce*, Mont., 89 P. (2d) 269.

1939. ✓ This section does not prohibit an appealing party from preparing a bill of exceptions or getting an extension of time where motion for new trial is pending. *Pierce v. Pierce*, Mont., 89 P. (2d) 269.

1939. ✓ Granting of extension of time to file bill of exceptions held not abuse of discretion though grounds were that reporter was engaged in private employment, but also had work on "other cases." *Jensen v. Cloud*, Mont., 88 P. (2d) 36.

1939. ✓ Where the defendant filed a motion for a new trial which was not decided by the court within the 15 days, as provided by statute, and was therefore deemed denied by force of section 9400, so that the bill of exceptions was due under section 9390 within 15 days thereafter and the defendant obtained extensions from time to time within the periods of prior extensions, the court properly refused to strike the bill, which was filed within the time of such extensions. *Ingman v. Hewitt*, 107 Mont. 267, 86 P. (2d) 653.

1938. ✓ Failure to present the bill within the time limited by this section, or within the time of an extension granted during that time, or the time of a prior timely extension, results in the court's loss of jurisdiction of the case, and the bill will be stricken on appeal. *Vicain v. City of Missoula*, 107 Mont. 105, 81 P. (2d) 350.

1937. ✓ Although an affidavit on which the time to file a bill of exceptions was extended beyond the time allowed by the statute and 60 days more, was not incorporated in the bill as filed, but the order granting the extension disclosed that such an affidavit was filed, the reviewing court had jurisdiction to review matters appearing in the bill, since it was presumed, in the absence of a showing to the con-

trary, that the affidavit was sufficient to invoke the discretion of the trial court. *Atlantic Pacific Oil Co. of Montana v. Gas Development Co.*, 105 Mont. 1, 69 P. (2d) 750.

1935. ✓ Where amendments are proposed to the proposed bill which are not accepted, three methods are available to secure the settlement of the proposed bill, namely: Within ten days after the service of the amendments, present the proposed bill and amendments, to the judge on five days' notice to the adverse party, or deliver them to the clerk, or deliver them to the judge. *Frisbee v. Coburn*, 101 Mont. 58, 52 P. (2d) 882.

1935. ✓ Where the proposed bill was filed by the plaintiff with the clerk and the amendments were filed by the defendants, a substantial compliance with the statute was accomplished, notwithstanding hearing date was not within statutory ten-day period following service of amendments and on five day's notice. *Frisbee v. Coburn*, 101 Mont. 58, 52 P. (2d) 882.

CHAPTER 57

PROVISION RELATING TO TRIALS IN GENERAL—NEW TRIALS

9395. New trial defined.

1936. ✓ Where the right to grant new trials is conferred upon justices of the peace, the same principles govern the extent and exercise of the jurisdiction as govern courts of record. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

1936. ✓ Where a motion for a new trial, authorized by law, is made within time, the judgment entered, and on which otherwise an execution might issue, is not final until the motion is disposed of, and the period for appeal does not begin to run until the motion is denied. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

1936. ✓ "Issue of fact," as used in this section, refers only to issues arising under the pleadings. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

9396. New trial in equity cases.

1938. ✓ Section 9396, restricting grounds for granting a new trial to those mentioned in the first, third, and fourth subdivisions of section 9397, was impliedly repealed by the addition of subdivision (8) to section 9397 by the laws of 1935, chapter 68, giving the right to a new trial where the right to a bill of exceptions has been lost in several instances. *State ex rel. Jackson v. District Court*, 107 Mont. 30, 79 P. (2d) 665.

9397. When a new trial may be granted.

1937. ✓ A recovery of \$3,000 for injury to fingers of automobile mechanic, largely destroying the efficient use of his hand, and for pain and suffering, held not excessive in *Chancellor v. Hines Motor Supply Co.*, 104 Mont. 603, 69 P. (2d) 764.

1936. ✓ Payment of money to juror, to reimburse him for extra expenses, after entry of judgment, where his testimony was merely cumulative of testimony of other witnesses, and no prior promise to make the payment had been made, did not justify setting verdict aside. *Wibaux Realty Co. v. Northern Pac. Ry. Co.*, 101 Mont. 126, 54 P. (2d) 1175.

1936. ✓ The fact that one juror furnished liquor to some of the others did not impair the verdict where there was no evidence to connect the prevailing party litigant therewith, and it was not shown that the use was excessive or led to a miscarriage of justice. *Wibaux Realty Co. v. Northern Pac. Ry. Co.*, 101 Mont. 126, 54 P. (2d) 1175.

1936. ✓ A verdict of \$3,500 awarded a widow seamstress, supporting her children, for injuries sustained by spraining her ankle in a theater so as to render her unable to continue her occupation and to do housework sustained on appeal. *McCartan v. Park Butte Theater Co.*, 103 Mont. 342, 62 P. (2d) 338.

1936. ✓ It is the province of the reviewing court to consider the whole matter of damages and to set aside the verdict only where the amount of damages cannot be reconciled with a conscientious interpretation of the evidence or a rational understanding of the facts as a whole. *McCartan v. Park Butte Theater Co.*, 103 Mont. 342, 62 P. (2d) 338.

1936. ✓ Unless the verdict of the jury, in fixing the amount of damages in personal injury actions, is such as to shock the conscience and understanding it must be accepted as conclusive. *McCartan v. Park Butte Theater Co.*, 103 Mont. 342, 62 P. (2d) 338.

Subdivision 8.

1938. ✓ Section 9396, restricting grounds for granting a new trial to those mentioned in the first, third, and fourth subdivisions of section 9397, was impliedly repealed by the addition of subdivision (8) to section 9397 by the laws of 1935, chapter 68, giving the right to a new trial where the right to a bill of exceptions has been lost in several instances. *State ex rel. Jackson v. District Court*, 107 Mont. 30, 79 P. (2d) 665.

1938. ✓ New trial awarded where the right to a bill of exceptions was lost through the death of the reporter. *State ex rel. Jackson v. District Court*, 107 Mont. 30, 79 P. (2d) 665.

9399. Notice of intention—contents and service.

1939. ✓ "After the return of the verdict" refers to a jury trial, and "after receiving notice of the decision of the court" has reference to a nonjury trial. In either case, the clear intentment of the statute is that the notice of motion for a new trial shall only be given after all the issues of fact necessary to a determination of the whole case upon the pleadings have been decided and determined. *State ex rel. King v. District Court*, 107 Mont. 476, 86 P. (2d) 755.

1939. ✓ The initiation of a motion for a new trial is not premature because the movant has not been served with a legal notice of the court's decision. *State ex rel. King v. District Court*, 107 Mont. 476, 86 P. (2d) 755.

1939. ✓ This section does not require notice after judgment, but only notice after verdict of the jury or decision of the court. *State ex rel. King v. District Court*, 107 Mont. 476, 86 P. (2d) 755.

1939. ✓ The notice of the decision of the court, being for the benefit of the party moving for a new trial, may be waived by him. *State ex rel. King v. District Court*, 107 Mont. 476, 86 P. (2d) 755.

9400. Hearing of motion—continuance—papers used.

1939. ✓ Where the judge did not communicate his decision in the manner required by the section until the expiration of 15 days from the hearing of the

motion for a new trial it was deemed to have been denied. *State ex rel. King v. District Court*, 107 Mont. 476, 86 P. (2d) 755.

1939. Within the meaning of this section to "decide" means to determine; to form a definite opinion; to come to a conclusion; to give a decision. *State ex rel. King v. District Court*, 107 Mont. 476, 86 P. (2d) 755.

1939. The decision on a motion for a new trial must be communicated in one of the ways specified in this section, within the statutory time, and mere oral announcement to one of counsel in the judge's chambers is insufficient. *State ex rel. King v. District Court*, 107 Mont. 476, 86 P. (2d) 755.

1938. Where the defendant filed a motion for a new trial which was not decided by the court within the 15 days, as provided by statute, and was therefore deemed denied by force of section 9400, so that the bill of exceptions was due under section 9390 within 15 days thereafter and the defendant obtained extensions from time to time within the periods of prior extensions, the court properly refused to strike the bill, which was filed within the time of such extensions. *Ingman v. Hewitt*, 107 Mont. 267, 86 P. (2d) 653.

9402. Contents of record on appeal.

1938. "An order denying a motion for a new trial is not an appealable order, but review of the order may be secured on appeal from the judgment." *State ex rel. Jackson v. District Court*, 107 Mont. 30, 79 P. (2d) 665, citing this section.

CHAPTER 58

THE MANNER OF GIVING AND ENTERING JUDGMENT

9403. Judgment to be entered in twenty-four hours, etc.

1939. In equity suit plaintiff's notice of cross-appeal was timely filed, where filed within statutory time after judgment signed by court and filed by clerk, though clerk had previously entered court's findings and conclusions of law as ministerial act, since latter did not constitute final judgment. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

9409. Judgment-roll—contents and filing.

1935. The absence from the record on appeal of papers which ought to have been included within the judgment roll is not enough to make it appear affirmatively that the court had no jurisdiction. *State ex rel. Delmoe v. District Court*, 100 Mont. 131, 46 P. (2d) 39.

9410. Judgment lien—when it begins and when it expires.

1939. A construction company obtained a judgment against a reservoir company for construction work done. The reservoir company brought suit under the declaratory judgment act to have the judgment declared to be not a lien and further to enjoin the construction company from claiming a lien under the Montana statutes. Held, that the reservoir company was not exempt from execution and that the judgment against it should stand. *Ackroyd et al. v. Brady Irr. Co. et al.*, 27 Fed. Supp. 503.

1937. The lien of a judgment against an heir of an intestate attached on the death of the intestate so that the heir's deed of his undivided interest in the inherited land was subject to the lien though such interest was not disclosed of record in the office of the county recorder, since it was neither concealed nor undisclosed. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

1937. Section 9410 is broad enough to include, and does include, an interest in realty, the title to which vests subsequent to the docketing of a judgment and before satisfaction of the judgment lien. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

1937. The general rule is that a judgment is a lien against the real estate of a judgment debtor only as provided by statute. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

1937. The effect of this section is not conditioned upon a judgment of the district court being carried into the records of the county recorder. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

CHAPTER 59

THE EXECUTION

Section

- 9428.1. Osteopaths and chiropractors.
- 9429. Exemption of earnings—debts incurred for necessities.
- 9443. Redemption money — computation of amount to be paid.
- 9444. Redemptioners' rights—manner of redeeming—when purchaser entitled to deed—certificate of redemption—redemption by stockholders—redeeming from wife.
- 9444.1. Mortgages — redemption — emergency declared.
- 9444.2. Same—period of redemption may be extended.
- 9444.3. Same—benefits of act—how invoked.
- 9444.4. Same—hearing and order of court.
- 9444.5. Same—suspension of period of redemption.
- 9444.6. Same—effect of default by applicant.
- 9444.7. Same—extension of period of redemption in certain cases.
- 9444.8. Same—court may revise and alter terms.
- 9444.9. Same—certain deficiency judgments prohibited.
- 9444.10. Same—application of act.
- 9444.11. Same—United States as mortgagee—act not applicable.

9416. Within what time execution may issue.

1939. An action was brought by the state to renew a judgment in its favor entered more than 10 years before, claiming that the running of the statute of limitations was tolled by the pendency of appeals to the state supreme court and the United States Supreme Court, supersedeas bonds filed in each appeal. Held; that the supersedeas bond merely prohibited the issuance of an execution pending appeal, and the appeal itself did not prohibit the bringing of an action to renew the judgment within the ten year limitation, and therefore did not toll the statute. *State v. Hart Refiners*, Mont., 92 P. (2d) 766.

9421. Execution after six years.

1939. ✓ An action was brought by the state to renew a judgment in its favor entered more than 10 years before, claiming that the running of the statute of limitations was tolled by the pendency of appeals to the state supreme court and the United States Supreme Court, supersedeas bonds filed in each appeal. Held; that the supersedeas bond merely prohibited the issuance of an execution pending appeal, and the appeal itself did not prohibit the bringing of an action to renew the judgment within the ten year limitation, and therefore did not toll the statute. *State v. Hart Refiners*, Mont., 92 P. (2d) 766.

9424. What shall be liable on execution—not affected until levy.

1939. ✓ A construction company obtained a judgment against a reservoir company for construction work done. The reservoir company brought suit under the declaratory judgment act to have the judgment declared to be not a lien and further to enjoin the construction company from claiming a lien under the Montana statutes. Held, that the reservoir company was not exempt from execution and that the judgment against it should stand. *Ackroyd et al. v. Brady Irr. Co. et al.*, 27 Fed. Supp. 503.

1935. ✓ A cause of action for personal injuries held not subject to execution, since it is not a chose in action such as may be classed as personal property under this section. *Toole v. Paumie Parisian Dye House*, 101 Mont. 74, 52 P. (2d) 162.

1935. ✓ A cause of action for personal injuries is not subject to attachment, since neither chose in action, credit, or debt, such as may be classed as personal property within the meaning of sections 9424, 9276, or 9267. *Coty v. Cogswell*, 100 Mont. 496, 50 P. (2d) 249.

9427. Property exempt from execution.

1939. ✓ A construction company obtained a judgment against a reservoir company for construction work done. The reservoir company brought suit under the declaratory judgment act to have the judgment declared to be not a lien and further to enjoin the construction company from claiming a lien under the Montana statutes. Held, that the reservoir company was not exempt from execution and that the judgment against it should stand. *Ackroyd et al. v. Brady Irr. Co. et al.*, 27 Fed. Supp. 503.

1935. ✓ While a judgment debtor may have a levy of execution set aside on a showing that the property is exempt from execution, a mere allegation that property levied on was exempt was insufficient, since it was a mere conclusion of law. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

1935. ✓ Exemption statutes are to be liberally construed, but such construction does not permit disregard of plain legislative mandates, and, when an exemption is available only to a certain class, a claimant must show that he comes within the class. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

1935. ✓ Of the act of 1933, chapter 120, sections 9430.1-9430.3, the court said: "This act presents a novel method of amending the sections named therein (§§ 9427, 9428), but that is its sole effect." No attack was made on this method of amendment on constitutional grounds. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

1935. ✓ Laws of 1933, chapter 120, sections 9430.1-9430.3, held subject to provision of section 9427, that "no person not a bona fide resident of this state shall have the benefit of these exemptions,"

and affidavit that failed to state that debtor claiming to have the right to set aside an execution on the ground of exemption was a resident of the state, was insufficient to vest jurisdiction in the justice of the peace to grant the application. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

1935. ✓ In action by sheriff against attachment plaintiff on latter's indemnity to sheriff for damages for wrongful attachment of exempt property the refusal of the court to instruct on exemptions was property refused where prior action by attachment defendant against sheriff had adjudicated that the property had been wrongfully attached, since it was exempt, and adjudicated damages to attachment defendant, thus eliminating matter of requested instruction as an issue in the case. *Weir v. Tong*, 100 Mont. 1, 46 P. (2d) 45.

9428. Specific exemptions.

1936. ✓ A miner was entitled to a miner's exemption although he had ceased mining operations a few days before the levy, had mining implements in his possession, but no place in view where he could engage in mining. *State ex rel. Bartol v. Justice of Peace Court*, 102 Mont. 1, 55 P. (2d) 691.

1936. ✓ A coal miner's coal cars, mining timbers, tie timbers, rails, and wagon scale held exempt under this section, subsection (5). *State ex rel. Bartol v. Justice of Peace Court*, 102 Mont. 1, 55 P. (2d) 691.

1936. ✓ A coal miner's implements are tools or utensils forming a part of equipment for work, under this section. *State ex rel. Bartol v. Justice of Peace Court*, 102 Mont. 1, 55 P. (2d) 691.

1935. ✓ While a judgment debtor may have a levy of execution set aside on a showing that the property is exempt from execution, a mere allegation that property levied on was exempt was insufficient, since it was a mere conclusion of law. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

1935. ✓ Exemption statutes are to be liberally construed, but such construction does not permit disregard of plain legislative mandates, and, when an exemption is available only to a certain class, a claimant must show that he comes within the class. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

1935. ✓ Of the act of 1933, chapter 120, sections 9430.1-9430.3, the court said: "This act presents a novel method of amending the sections named therein (§§ 9427, 9428), but that is its sole effect." No attack was made on this method of amendment on constitutional grounds. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

1935. ✓ Laws of 1933, chapter 120, sections 9430.1-9430.3, held subject to provision of section 9427, that "no person not a bona fide resident of this state shall have the benefit of these exemptions," and affidavit that failed to state that debtor claiming to have the right to set aside an execution on the ground of exemption was a resident of the state, was insufficient to vest jurisdiction in the justice of the peace to grant the application. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

9428.1. Osteopaths and chiropractors. In addition to the property mentioned in the two immediately preceding sections, there shall be exempt to all judgment debtors who are married or who are heads of families. the following:

(a) To osteopaths and chiropractors. The instruments and equipment necessary to the exercise of his profession, with his scientific and professional library and necessary office furniture. [L. '37, Ch. 127, § 1, adding new section after R. C. M. 1935, § 9428. Approved and in effect March 15, 1937.]

Section 2 repeals conflicting laws.

9429. Exemption of earnings—debts incurred for necessities. The earnings of the judgment debtor for his personal services rendered at any time within forty-five days next preceding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family, supported in whole or in part by his labor, are exempt; but where debts are incurred by any such person or his wife or family for gasoline and for the common necessities of life, then the one-half of such earnings above mentioned are nevertheless subject to execution, garnishment, and attachment, to satisfy debts so incurred. The words "his family", as used herein, are to be construed with the words "head of family", as used in section 6969. [L. '39, Ch. 77, § 1, amending R. C. M. 1935, § 9429. Approved and in effect February 28, 1939.]

Section 2 repeals conflicting laws.

1938. ✓ An affidavit for exemption which asserted ultimate facts and not conclusions of law was held sufficient to make a prima facie case calling for countervailing proof in *Williams v. Sorenson*, 106 Mont. 122, 75 P. (2d) 784.

1938. ✓ A substantial compliance with the statute is sufficient and technical objections will not defeat an exemption claim. *Williams v. Sorenson*, 106 Mont. 122, 75 P. (2d) 784.

1938. ✓ In order that earnings may be exempt under section 9429 it is not necessary that they were needed for the necessities of life of the family. *Williams v. Sorenson*, 106 Mont. 122, 75 P. (2d) 784.

1938. ✓ Evidence held to show that earnings and traveling expenses of a county assessor were necessary for the use of his family, within the meaning of section 9429, where other money had to be used for its support. *Williams v. Sorenson*, 106 Mont. 122, 75 P. (2d) 784.

1938. ✓ An exemption affidavit of a debtor was held sufficient which stated that his "personal earnings are necessary for the support of himself and his said family," where it also stated that he was the head of a family, though it did not state that his family was "supported in whole or in part by his labor." *Williams v. Sorenson*, 106 Mont. 122, 75 P. (2d) 784.

1938. ✓ "Earnings" is a more comprehensive term than either "wages" or "salary," and includes allowance of mileage and traveling expenses of a county assessor in the discharge of his duties, under a statute providing that such earnings shall be exempt from execution or garnishment if acquired within 45 days of service of the writ, whether or not they exceed actual expenses. *Williams v. Sorenson*, 106 Mont. 122, 75 P. (2d) 784.

9430. Homestead.

1939. ✓ A construction company obtained a judgment against a reservoir company for construction work done. The reservoir company brought suit under the declaratory judgment act to have the judgment declared to be not a lien and further to enjoin the construction company from claiming a lien under the Montana statutes. Held, that the reservoir company was not exempt from execution and that the judgment against it should stand. *Ackroyd et al. v. Brady Irr. Co. et al.*, 27 Fed. Supp. 503.

9430.1. Exemptions of aged persons.

1935. ✓ Laws of 1933, chapter 120, sections 9430.1-9430.3, held subject to provision of section 9427, that "no person not a bona fide resident of this state shall have the benefit of these exemptions," and affidavit that failed to state that debtor claiming to have the right to set aside an execution on the ground of exemption was a resident of the state, was insufficient to vest jurisdiction in the justice of the peace to grant the application. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

1935. ✓ Of the act of 1933, chapter 120, sections 9430.1-9430.3, the court said: "This act presents a novel method of amending the sections named therein [§§ 9427, 9428], but that is its sole effect." No attack was made on this method of amendment on constitutional grounds. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

1935. ✓ Exemption statutes are to be liberally construed, but such construction does not permit disregard of plain legislative mandates, and, when an exemption is available only to a certain class, a claimant must show that he comes within the class. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

9430.2. Truck or automobile—when exempt from execution.

1936. ✓ This section is not retroactive as to contract made before its enactment. *Rieger v. Wilson*, 102 Mont. 86, 56 P. (2d) 176.

9431. Writ—how executed.

1938. ✓ Where a judgment for the plaintiff was reversed on appeal, and the defendant filed a cost bill against the plaintiff for costs on appeal, execution thereon was properly restrained pending the outcome of the new trial, instead of allowing a sale of the cause of action to proceed, as, in view of sections 8980 and 8981, the plaintiff's attorney would not bid for the claim, and since the defendant would be amply protected by the right to offset its claim for costs against any judgment that the plaintiff might recover on the new trial. *Baker v. Tullock*, 106 Mont. 375, 77 P. (2d) 1035.

1938. ✓ In execution, in reference to things in action, the sheriff may either sell them or collect judgment, in his discretion, which is controllable by the court, but the most effective way is to let the pending action go to trial on the merits, as the sale of a cause of action at public auction is a poor method of ascertaining its value. *Baker v. Tullock*, 106 Mont. 375, 77 P. (2d) 1035.

9441. Real property—when sale absolute, and what certificate to contain.

1936. ✓ Persons receiving sheriff's deed to land sold on foreclosure of a first mortgage, no attempt to redeem having been made, acquired the legal title subject to the lien of a junior mortgage, and the

equity of redemption with respect to it was available to them for the purpose of clearing their title. *Parcells v. Nelson*, 103 Mont. 412, 63 P. (2d) 131.

9443. Redemption money—computation of amount to be paid. The judgment debtor, or redemptioner, may redeem the property from the purchaser any time within one year after the sale, on paying the purchaser the amount of his purchase, with one-half of one per cent ($\frac{1}{2}\%$) per month thereon in addition, up to the time of redemption, together with the amount of any assessment or taxes which the purchaser may have paid thereon after purchase, and interest on such amount, and if the purchaser be also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien with interest. [L. '37, Ch. 103, § 1, amending R. C. M. 1935, § 9443. Approved and in effect March 15, 1937.]

9444. Redemptioners' rights — manner of redeeming—when purchaser entitled to deed—certificate of redemption—redemption by stockholders—redeeming from wife. If property be so redeemed by a redemptioner, another redemptioner may, within sixty (60) days after the last redemption, again redeem it from the last redemptioner on paying the sum on such last redemption, with interest thereon at the rate of one-half of one per cent ($\frac{1}{2}\%$) per month in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and, in addition, the amount of any liens held by the said last redemptioner prior to his own, with interest; but the judgment under which the property was so sold need not be so paid as a lien. The property may be again, and as often as any redemptioner is so disposed, redeemed from any previous redemptioner, within sixty (60) days after the last redemption, on paying the sum paid on the last previous redemption, with interest thereon at the rate of one-half of one per cent ($\frac{1}{2}\%$) per month, and the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him, with like interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with like interest. Written notice of redemption must be given to the sheriff, and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner, or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the

sheriff and filed with the county clerk; and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien. If no redemption be made within one year after the sale, the purchaser, or his assignee, is entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff's deed; but in all cases, the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property. If the judgment debtor or his wife redeem, he or she must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. If the wife redeem, she shall become the owner of her husband's interest, subject to any liens thereon at the time of the execution sale. Upon a redemption by a debtor, or his wife, the person to whom the payment was made must execute and deliver to him or her a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk must note the record thereof in the margin of the record of the certificate of sale.

If a stockholder of a corporation redeems, the corporation, within one (1) year after the date of sale, may redeem by paying to the redemptioner, or the sheriff for his benefit, the amount paid to effect the redemption, with interest thereon at the rate of one-half of one per cent ($\frac{1}{2}\%$) per month from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the redemptioner, with like interest thereon. When a stockholder redeems, any other stockholder or stockholders may, at any time after such redemption, and within sixty (60) days after the expiration of one (1) year from the date of sale, contribute to the redemption by paying to the redeeming stockholder, or depositing with the sheriff for his benefit, a sum which bears the same proportion to the amount necessary to redeem which the number of shares owned by such contributing stockholder or stockholders bears to the number of shares of such corporation outstanding, with interest on such sum from the date of redemption until the date of contribution at the rate of one-half of one per cent ($\frac{1}{2}\%$) per month, together with a like proportion of the taxes or assessments paid by such redeeming stockholder, with like interest

thereon, and if the corporation does not redeem the property within the time and in the manner and form as aforesaid, the said redeeming and contributing stockholders shall be entitled to receive a sheriff's deed for such property so redeemed, and shall succeed to the said property as tenants in common in such proportions, respectively, as they shall respectively pay or contribute to such redemption as aforesaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute as aforesaid, present an affidavit, setting forth the number of shares of stock owned by him, and to the best of his knowledge, the number of shares of stock of the corporation outstanding.

If the wife of a judgment debtor redeem, the husband, within one year after the date of sale, may redeem by paying the wife or her successors in interest or the sheriff for her or their benefit, the amount paid to effect the redemption, with interest thereon at the rate of one-half of one per cent ($\frac{1}{2}\%$) per month from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the wife or her successors in interest, with like interest thereon. [L. '37, Ch. 103, § 2, amending R. C. M. 1935, § 9444. Approved and in effect March 15, 1937.

Section 3 repeals conflicting laws.

9444.1. Mortgages—redemption—emergency declared. The legislature of the state of Montana hereby declares that a public economic emergency does exist in the state of Montana. [L. '39, Ch. 124, § 1. Approved and in effect March 2, 1939.

Note. This statute, sections 9444.1-9444.11, is apparently an amendment and extension in time of L. '37, Ch. 73, which amended L. '35, Ch. 122, which latter was not printed in R. C. M. 1935. These statutes are almost identical, section by section, except for their effective periods.

9444.2. Same—period of redemption may be extended. Where any mortgage upon real property has been foreclosed and the period of redemption has not yet expired, or where a sale is hereafter had, in the case of real estate mortgage foreclosure proceedings, now pending, or which may hereafter be instituted prior to the expiration of two years from and after the passage of this act, or upon the sale of any real property under any judgment or execution where the period of redemption has not yet expired, or where such sale is made hereafter within two years from and after the passage of this act, the period of redemption may be extended for such additional time as

the court may deem just and equitable but in no event beyond March 1, 1941. [L. '39, Ch. 124, § 2. Approved and in effect March 2, 1939.

9444.3. Same—benefits of act—how invoked. Any mortgagor or execution debtor or judgment debtor who is lawfully in possession of land or lands during the pendency of mortgage foreclosure proceedings, or at the time of sale of land under judgment or execution sale, may avail himself of the relief authorized by this act in the following manner: At any time prior to the expiration of the period of redemption now provided by the laws of Montana any such person may apply to the district court having jurisdiction of the matter, on not less than ten (10) days' written notice to the mortgagee or judgment creditor, which notice may be served on the attorney of record of either, for an order determining the reasonable value of the income of said property, or if it has no income, then the reasonable rental value of the property involved in such sale, and permitting the applicant for such relief, to pay all or a reasonable part of the income or rental value of said property, to be applied to the payment of taxes, insurance, interest or to the mortgage or judgment indebtedness, at such times and in such manner as shall be fixed and determined by the court, and to thereupon obtain an extension of the period of redemption in accordance with the terms of this act. [L. '39, Ch. 124, § 3. Approved and in effect March 2, 1939.

9444.4. Same—hearing and order of court. The court shall thereupon hear said application and after taking testimony thereon, shall make and enter its order directing the payment by the applicant for relief under this act of such an amount at such times and in such manner as to the court shall, under all the circumstances of the case, appear just and equitable, to be applied as in this act provided. Such order to further contain such terms and conditions as to the care and operation of the mortgaged premises as to the court shall appear just and equitable. [L. '39, Ch. 124, § 4. Approved and in effect March 2, 1939.

9444.5. Same — suspension of period of redemption. Upon the filing of the application provided for in this act and the service of the notice of same as herein provided, the running of the period of redemption shall be tolled until the court shall make its order upon such application. [L. '39, Ch. 124, § 5. Approved and in effect March 2, 1939.

9444.6. Same—effect of default by applicant. If at any time after the making of the order of court aforesaid, any applicant for relief under

the terms of this act shall make default in the payments or any of them specified in the court's order, or in performance of any of the terms and conditions of the court's order, or shall commit any waste upon the premises involved, such default or commission of waste shall constitute grounds for the revocation of said order and for the termination of the applicant's right to redeem said land. If such default or commission of waste shall continue for a period of thirty (30) days, the mortgagee, judgment creditor or other persons whose rights have been affected by such order, may upon not less than ten (10) days' notice to the applicant for relief under this act, apply to the district court for an order adjudging the applicant to have defaulted in the performance of the court's order and for the revocation of said order and the restriction of the right of redemption to the period theretofore provided by law. Said applicant shall be heard and the matter determined by the court who shall thereupon make and enter such order thereon as in its judgment the circumstances of the case warrant. [L. '39, Ch. 124, § 6. Approved and in effect March 2, 1939.]

9444.7. Same — extension of period of redemption in certain cases. The time of redemption from all real estate mortgage foreclosures and from all execution sales of land heretofore made, which would under existing laws expire in less than thirty (30) days after the effective date of this act, are hereby extended to a time thirty (30) days after the effective date of this act, and any person who is entitled to relief hereunder, may avail himself of the benefits of this act in relation to such foreclosure or execution sales at any time prior to the expiration of said thirty (30) day period. [L. '39, Ch. 124, § 7. Approved and in effect March 2, 1939.]

9444.8. Same—court may revise and alter terms. Upon the application of either party prior to the expiration of the extended period of redemption as provided in this act and upon the presentation of evidence that the terms fixed by the court are no longer just and reasonable, the court may revise and alter said terms, in manner as the changed circumstances and conditions may require. [L. '39, Ch. 124, § 8. Approved and in effect March 2, 1939.]

9444.9. Same—certain deficiency judgments prohibited. Until March 1, 1941, no deficiency judgment shall be entered or given in this state in any real estate mortgage foreclosure action now or hereafter pending in this state until the period of redemption now allowed by the laws of Montana or as extended under the

provisions of this act, has expired. [L. '39, Ch. 124, § 9. Approved and in effect March 2, 1939.]

9444.10. Same — application of act. This act as to mortgage foreclosures shall apply only to mortgages made prior to the passage and approval of this act but shall not apply to mortgages made prior to the passage of this act which shall hereafter be renewed or extended for a period ending more than one year after the passage of this act; neither shall this act apply in any way which would allow a resale, stay, postponement or extension to such time that any right might be adversely affected by a statute of limitations. [L. '39, Ch. 124, § 10. Approved and in effect March 2, 1939.]

9444.11. Same—United States as mortgagee—act not applicable. The provisions of this act shall not apply to any mortgage while such mortgage is held by the United States or by any agency, department, bureau, board, or commission thereof, as security or pledge of the maker, its successors, or assigns, nor shall the provisions of this act apply to any mortgage held as security or pledge to secure payment of a public debt or to secure payment of the deposit of public funds, nor shall the provisions of this act apply to any note or mortgage insured by the federal housing administrator. [L. '39, Ch. 124, § 11. Approved and in effect March 2, 1939.]

Section 12 repeals conflicting laws.

9448. Who entitled to rents and profits.

1936. After the expiration of the time for statutory redemption, the assignee of a junior mortgage on land foreclosed on first mortgage could only protect himself from loss, in the absence of the tolling of the statute, and not be credited with rents and profits. *Parcells v. Nelson*, 103 Mont. 412, 63 P. (2d) 131.

1936. The remedy of this section is ineffectual where the demand is not made within the statutory period of one year. *Parcells v. Nelson*, 103 Mont. 412, 63 P. (2d) 131.

9449. Possession of lands prior to foreclosure and during period of redemption.

1935. Mortgagor of business property held not entitled to possession during the period of redemption, as the statute applies only where the premises are occupied as a home for himself and his family. *Rock Island Plow Co. v. Cut Bank Implement Co.*, 101 Mont. 117, 53 P. (2d) 116.

CHAPTER 61

ACTIONS FOR FORECLOSURE OF MORTGAGES

9467. Proceedings in foreclosure suits.

1938. This section is applicable only to actions for the recovery of debts or the enforcement of rights

secured by a mortgage, or what amounts to a mortgage in law, and not where a plaintiff is seeking to cancel a contract for the sale of land to the defendant where the latter had given another contract for the payment of money as security for the payment of overdue installments on the land purchase contract, but not as security for payment of future installments. *White v. Jewett*, 106 Mont. 416, 78 P. (2d) 85.

1938. ✓ An affidavit for attachment was held not insufficient because it did not negative the existence of any other security than a worthless mortgage set out in the affidavit. *Bailey v. Hansen*, 105 Mont. 552, 74 P. (2d) 438.

1937. ✓ The purpose of this section is to compel one who has taken security for his debt to exhaust the security before resorting to the general assets of the debtor. *Bailey v. Hansen*, 105 Mont. 552, 74 P. (2d) 438.

1937. ✓ Section 9467 does not prohibit a personal action when the security has become valueless, and it is no bar to a personal action in all cases even though the act of the mortgagee may have caused the security to become valueless, and, furthermore, to prove that the security has become valueless it would not be necessary to first foreclose the mortgage, and that same rule applies to the right to levy an attachment. *Bailey v. Hansen*, 105 Mont. 552, 74 P. (2d) 438.

1937. ✓ Where a mortgagor represented fraudulently to the plaintiff mortgagee that there was no mortgage ahead of his mortgage, though there was such a mortgage recorded, the plaintiff was entitled to prove the valuelessness of his mortgage and to attach the property of the mortgagor because of such valuelessness without first foreclosing, though seven years had elapsed before he brought the action wherein the affidavit for attachment was filed. *Bailey v. Hansen*, 105 Mont. 552, 74 P. (2d) 438.

1936. ✓ Where the statute has been followed and the court has secured jurisdiction over the person of the debtor, and the property, the debt is merged in the judgment and decree rendered, though the property may not bring sufficient to satisfy the judgment, no further action can be brought on the debt evidenced by the note. The judgment creditor's remedy is to have a deficiency judgment entered against the judgment debtor. *Lepper v. Jackson*, 102 Mont. 259, 57 P. (2d) 768.

1936. ✓ The purpose of this section is to compel one who has taken security for his debt to exhaust his security before resorting to the general assets of the debtor; such a creditor cannot waive his security and sue on the debt except by the forbearance of the debtor, who may plead the mortgage as a bar to plaintiff's action, and it becomes such a bar unless the plaintiff can thereafter show that the security, through no fault of his, has become worthless. *Lepper v. Jackson*, 102 Mont. 259, 57 P. (2d) 768.

1936. ✓ Where a joint debtor, brought into a foreclosure suit by substituted service, did not plead or show that his co-defendant had property in the state on which the plaintiff's deficiency judgment against the codebtor might become a lien, he could not, in an action by the creditor against him for the amount of the debt that was not collectible from the mortgaged property, defend on the ground that the creditor may have had security or a remedy which he did not exhaust. *Lepper v. Jackson*, 102 Mont. 259, 57 P. (2d) 768.

1936. ✓ Where it is impossible, in one foreclosure action, to secure full satisfaction of a joint debt, as against one of the joint debtors brought in by substituted service, the debt is not extinguished by the foreclosure of the mortgage and the entry of a deficiency judgment against his codebtor. *Lepper v. Jackson*, 102 Mont. 259, 57 P. (2d) 768, holding that the creditor could, in such a case, after exhausting the security, proceed against the other debtor over whom the court did not have jurisdiction, notwithstanding the provision of the statute that but one action could be brought.

1936. ✓ A deficiency judgment becomes a personal judgment against the debtor properly before the court, and, if the judgment creditor voluntarily elects to take personal judgment against one of two joint defendants, equally liable, without in any way preserving his rights as against the other then equally liable before the court and against whom he takes only a foreclosure, he must be deemed to have waived his right against the latter, and his deficiency judgment bars a subsequent action against him whom he could have had personal judgment, had he so desired. This rule does not apply where only one of two defendants have been personally served, for in that case the defendants would not be "equally liable before the court." *Lepper v. Jackson*, 102 Mont. 259, 57 P. (2d) 768.

CHAPTER 63

QUIETING TITLE TO PERSONAL PROPERTY — QUIETING TITLE TO REAL PROPERTY AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE

Section

- 9479.1 Oil and gas leases—quieting title and cancellation—owners may join against common lessee—complaint—separate statements—decree.
- 9479.2. Same—same—remedy cumulative.
- 9488.1. Provisions to apply if no known claimants or possible claimants—facts to be stated—direction of summons.

9478.1. Quieting title to personal property, action for.

1938. ✓ Whether the lessee of placer mining ground was entitled to remove his dredge, which was not physically attached to the realty, on termination of the lease depended on the intention of the parties as determined by the lease and contract, and this intention was a question for the jury in an action to quiet title and in claim and delivery. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

1938. ✓ In an action to quiet title and claim and delivery of a gold mining dredge used by the lessee of a placer claim, held that the judge's action in allowing an amendment, near the close of the plaintiff's case, to show termination of the lease, in order to make the pleading conform to the proof introduced, instead of requiring the filing of a supplemental complaint, was irregular but not prejudicial. *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P. (2d) 73.

9479.1. Oil and gas leases—quieting title and cancellation—owners may join against common lessee—complaint—separate statements—decree. In an action for the cancellation of an oil and/or gas lease or leases, or quieting title against the claims thereunder, two or more plaintiffs may join in a single action against a common lessee and any one claiming by, through or under such lessee, as an assignee or otherwise. In the complaint in such action the cause or causes of action of each plaintiff shall be set forth separately and there shall be designated the lease or leases, or claims, or interests sought to be cancelled or quieted. It shall be no defense to such an action that the lands of the plaintiffs are non-contiguous or that there is a lack of mutuality of interest between the plaintiffs in the subject of the action or in the relief sought, and the decree in such action shall specify the lease, leases, claims or interests cancelled or quieted. [L. '39, Ch. 135, § 1. Approved March 9, 1939.]

9479.2. Same—same—remedy cumulative. This procedure shall be in addition to and not in substitution of any existing remedies now allowed by law. [L. '39, Ch. 135, § 2. Approved March 9, 1939.]

Section 3 repeals conflicting laws.

9488.1. Provisions to apply if no known claimants or possible claimants—facts to be stated—direction of summons. If, in any case, there are no known claimants, or possible claimants, to any of the property involved in any action contemplated by sections 9479 to 9488, both inclusive, of this code, the action may nevertheless be maintained against all persons, unknown, claiming or who might claim any right, title, estate, or interest in, or lien or encumbrance upon, the real property described in the complaint, or any part thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued, and such action may be prosecuted to judgment in the same manner and with like effect as though there had been known claimants or possible claimants; and in any such case, the complaint, the affidavit for service by publication, the order for service by publication, and the decree shall state the facts and the summons shall be directed to such unknown persons. [L. '39, Ch. 68, § 1, adding new section after R. C. M. 1935, § 9488. Approved and in effect February 27, 1939.]

CHAPTER 65

QUO WARRANTO

9576. When proceedings may be instituted.

1939. Generally speaking, quo warranto is the proper remedy to try title to an office. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

1936. The supreme court has jurisdiction of an original proceeding in quo warranto brought by the attorney general on behalf of the state for the purpose of ousting an incumbent from office. State ex rel. Nagle v. Kelsey, 102 Mont. 8, 55 P. (2d) 685.

9578. Who may commence the action.

1936. The supreme court has jurisdiction of an original proceeding in quo warranto brought by the attorney general on behalf of the state for the purpose of ousting an incumbent from office. State ex rel. Nagle v. Kelsey, 102 Mont. 8, 55 P. (2d) 685.

9581. What complaint to contain.

1936. In quo warranto by the attorney general to oust an incumbent from office it is not necessary that the pleadings set forth the name of any other claimant to the office, nor that it be shown that any one else is entitled to the office. State ex rel. Nagle v. Kelsey, 102 Mont. 8, 55 P. (2d) 685.

9583. Where action brought.

1936. The supreme court has jurisdiction of an original proceeding in quo warranto brought by the attorney general on behalf of the state for the purpose of ousting an incumbent from office. State ex rel. Nagle v. Kelsey, 102 Mont. 8, 55 P. (2d) 685.

9587. Pleadings.

1936. In quo warranto by the attorney general to oust an incumbent from office it is not necessary that the pleadings set forth the name of any other claimant to the office, nor that it be shown that any one else is entitled to the office. State ex rel. Nagle v. Kelsey, 102 Mont. 8, 55 P. (2d) 685.

9600. Actions in supreme court.

1936. The supreme court has jurisdiction of an original proceeding in quo warranto brought by the attorney general on behalf of the state for the purpose of ousting an incumbent from office. State ex rel. Nagle v. Kelsey, 102 Mont. 8, 55 P. (2d) 685.

1936. In quo warranto by the attorney general to oust an incumbent from office it is not necessary that the pleadings set forth the name of any other claimant to the office, nor that it be shown that any one else is entitled to the office. State ex rel. Nagle v. Kelsey, 102 Mont. 8, 55 P. (2d) 685.

CHAPTER 68

MANNER OF COMMENCING ACTION IN JUSTICE COURTS

Section

9631. Summons—how issued, directed, and what to contain—statement of cause of action—copy of complaint served with summons—effect.
9632. Time for appearance of defendant.
9633. Alias summons.
9637. Fixing day of trial.

9629. Parties may appear in person or by attorney.

1937. [✓]A corporation is not a "person" who may practice law. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

9631. Summons—how issued, directed, and what to contain—statement of cause of action—copy of complaint served with summons—effect. The summons must be directed to the defendant and signed by the justice, and must contain:

1. The title of the court, the name of the county and city or township in which the action is commenced, and the names of the parties thereto;

2. A sufficient statement of the cause of action, in general terms, to apprise the defendant of the nature of the claim against him, but a copy of the complaint in the action when served with the copy of the summons upon defendant in lieu of said statement, is sufficient;

3. A direction that the defendant appear and answer before the justice, at his office, as specified in the next section. And that if he fail to appear and answer, judgment will be taken against him according to the complaint. [L. '39, Ch. 91, § 1, amending R. C. M. 1935, § 9631. Approved and in effect March 1, 1939.

Section 3 repeals conflicting laws.

9632. Time for appearance of defendant. The time specified in the summons for the appearance of the defendant must be as follows:

1. If an order of arrest be endorsed upon the summons, forthwith.

2. In all other cases the summons shall provide that the defendant shall answer, and if such answer be in writing file the same and serve a copy thereof upon the plaintiff or his attorney, within six days after service of this summons, exclusive of the day of service; and in case of his failure to appear or answer, judgment will be taken against him by default for the relief demanded in the complaint. [L. '39, Ch. 196, § 1, amending R. C. M. 1935, § 9632, as amended by L. '37, Ch. 34, § 3. Approved and in effect March 17, 1939.

Section 2 repeals conflicting laws.

9633. Alias summons. If the summons is returned without being served upon any or all of the defendants, the justice, upon the demand of the plaintiff, may issue an alias summons in the same form as the original. [L. '37, Ch. 34, § 4, amending R. C. M. 1935, § 9633. Approved and in effect February 19, 1937.

Section 6 repeals conflicting laws.

9637. Fixing day of trial. When all parties served with process shall have appeared, or some of them have appeared, and the remaining defendants have made default, the justice must fix a day for the trial of said cause, and notify the plaintiffs and the defendants who have appeared thereof [therein]. [L. '37, Ch. 34, § 5, amending R. C. M. 1935, § 9637. Approved and in effect February 19, 1937.

Section 6 repeals conflicting laws.

CHAPTER 71

JUDGMENT BY DEFAULT

Section

9664. Judgment when defendant fails to appear—inquest—entry of default.

9664. Judgment when defendant fails to appear—inquest—entry of default. If the defendant fails to appear, answer or demur within the time specified in the summons, then the defendant shall be in default, and his default shall be entered accordingly by the court. Evidence may then be submitted and judgment rendered and entered in accordance with the statement in the summons or as prayed for in the complaint at any time within ninety days from the date of the entry of such default of the defendant. [L. '39, Ch. 91, § 2, amending R. C. M. 1935, § 9664, as amended by L. '37, Ch. 34, § 1. Approved and in effect March 1, 1939.

Section 3 repeals conflicting laws.

CHAPTER 74

JUDGMENTS (OTHER THAN DEFAULT) IN JUSTICE COURTS

Section

9680. Judgment of dismissal entered in certain cases without prejudice.

9680. Judgment of dismissal entered in certain cases without prejudice. Judgment that the action be dismissed without prejudice to a new action, may be entered with costs in the following cases:

1. When the plaintiff voluntarily dismisses the action, at or before the close of his evidence, when there is no counterclaim.

2. When he fails to appear at any time within five days after default has been entered, or at the time to which the action has been postponed.

3. When, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the court.

4. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county, or township, town, or city; but if the objection is taken and overruled, it is the cause of a reversal on appeal, and does not otherwise invalidate the judgment; if not taken at the trial, it is waived. [L. '37, Ch. 34, § 2, amending R. C. M. 1935, § 9680. Approved and in effect February 19, 1937.]

Section 6 repeals conflicting laws.

CHAPTER 78

GENERAL PROVISIONS RELATING TO JUSTICE COURTS

Section

9716. Who entitled to costs—prevailing party.

9713. Justices to receive all moneys collected and pay same to parties.

1935. The court's rendition of judgment for costs at time motion for dismissal was granted held not prejudicial where matter was later taken under advisement after filing of cost bill and objections thereto made. *Graham v. Superior Mines*, 100 Mont. 427, 49 P. (2d) 443.

9716. Who entitled to costs—prevailing party. The prevailing party in justice courts is entitled to costs of the action and also of all proceedings taken by him in aid of execution issued upon any judgment recovered therein. [L. '37, Ch. 156, § 1, amending R. C. M. 1935, § 9716. Approved and in effect March 16, 1937.]

Section 2 repeals conflicting laws.

9717. What provisions of code applicable to justices' courts.

1936. Where the right to grant new trials is conferred upon justices of the peace, the same principles govern the extent and exercise of the jurisdiction as govern courts of record. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

CHAPTER 80

APPEALS TO SUPREME COURT

9731. From what judgment or order an appeal may be taken.

1939. An appeal does not lie from an order denying a rehearing or reappraisal. In *re Blankenbaker's Estate*, Mont., 91 P. (2d) 401.

1939. Though an order sustaining a demurrer to a petition for probate of a will also dismissed the petition, the order was not appealable, since it was neither a judgment nor an appealable order. In *re Augestad's Estate*, Mont., 88 P. (2d) 32.

1939. An order sustaining a demurrer to a petition for probate of a will is not appealable. In *re Augestad's Estate*, Mont., 88 P. (2d) 32.

1937. A motion to quash an application for a writ of supervisory control was granted on ground that remedy by appeal was adequate where the probate court admitted a will to probate although a special finding of the jury was to effect that the will was induced by undue influence, no emergency being shown although the will exempted the executor from giving bond. *State ex rel. Furshong v. District Court*, 105 Mont. 37, 69 P. (2d) 119.

1935. On appeal by a party from a divisible judgment only such evidence as is pertinent to the appellant's rights need be brought up. *Wills v. Morris*, 100 Mont. 504, 50 P. (2d) 858.

1935. In order to entitle one to appeal he must have an appealable interest in the judgment, and a mere interest in the costs, with no right to appeal with respect to other matters included in the judgment, gives such a party no right of appeal. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. Under Montana statutes a judgment against a party or in his favor, on the matter of costs, will be considered on appeal if the judgment is otherwise appealable. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. A plaintiff who has been denied a portion of the costs to which he is justly entitled under the statute is a "party aggrieved" and is in the same position as a wholly unsuccessful party, as regards the right of appeal. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. This section does not provide for an appeal from an order taxing costs, and consequently an appeal does not lie from such an order; such an order can only be reviewed on appeal from the judgment. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. The right of appeal is purely statutory, and one who successfully invokes such a right must point out the statute giving him such right. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. Where all of the parties diverting water from a stream are made parties to an action to adjudge water rights, every party becomes an antagonist of every other party, hence if two or more parties are awarded a water right under the decree, each receiving such award recovers a judgment against the other or others, and such judgment is divisible into parts, and an appeal will lie from a part of the judgment. *Wills v. Morris*, 100 Mont. 504, 50 P. (2d) 858.

Subdivision 2.

1939. The order denying the motion to abrogate the order appointing the receiver was itself an appealable order. *State ex rel. Union Bank & Trust Co. v. District Court for Lewis & Clark County*, Mont., 91 P. (2d) 403.

Subdivision 3.

1938. In a proceeding in the matter of the estate of a deceased widow a "judgment and order" of the court, directing the executor to transfer a certain sum from the inventoried property of the widow to remaindermen under her husband's will, was appealable under subdivision (3) of this section, although it could have been embodied in the final decree, the parties having submitted to the jurisdiction of the court without objection as to the form of the action. In *re Yergy's Estate*, 106 Mont. 505, 79 P. (2d) 555.

9732. Time for taking appeal.

1939. This section applies to respondent on appeal who desires to have ruling against him reviewed. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

1939. In equity suit plaintiff's notice of cross-appeal was timely filed, where filed within statutory time after judgment signed by court and filed by clerk, though clerk had previously entered court's findings and conclusions of law as ministerial act, since latter did not constitute final judgment. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

1938. Where the court denied a divorce, on the ground that the petitioner had not proved residence in the state, but did not dismiss the case, or order it dismissed, there was no final judgment from which appeal could be taken. *State ex rel. Duckworth v. District Court*, 107 Mont. 97, 80 P. (2d) 367.

1936. A remedy by appeal does not necessarily defeat the right relief by prohibition. *State ex rel. Redle v. District Court*, 102 Mont. 541, 59 P. (2d) 58.

9733. Appeal—how taken.

1938. Where the relators on a writ of supervisory control allege that because of their poverty they cannot pay the usual fees on an appeal, or file an undertaking, and the motion to quash the application admits the allegation, so that the remedy by appeal is not open to them, and there is no showing that the relators misrepresent their financial condition and justice cannot be done otherwise, the writ will lie. *State ex rel. Nelson v. District Court*, 107 Mont. 167, 81 P. (2d) 699.

1936. A defendant in a suit to set aside a trust, who did not appeal from the decision, and who held the trust property, held an adverse party and should have been served with notice of appeal. In re *Roberts' Estate*, 102 Mont. 240, 58 P. (2d) 495.

1935. Where all of the parties diverting water from a stream are made parties to an action to adjudicate water rights, every party becomes an antagonist of every other party, hence if two or more parties are awarded a water right under the decree, each receiving such award recovers a judgment against the other or others, and such judgment is divisible into parts, and an appeal will lie from a part of the judgment. *Wills v. Morris*, 100 Mont. 504, 50 P. (2d) 858.

1935. On appeal by a party from a divisible judgment only such evidence as is pertinent to the appellant's rights need be brought up. *Wills v. Morris*, 100 Mont. 504, 50 P. (2d) 858.

9745. Record on appeal from orders other than new trial.

1937. A motion to quash an application for a writ of supervisory control was granted on ground that remedy by appeal was adequate where the probate court admitted a will to probate although a special finding of the jury was to effect that the will was induced by undue influence, no emergency being shown although the will exempted the executor from giving bond. *State ex rel. Furshong v. District Court*, 105 Mont. 37, 69 P. (2d) 119.

1936. Failure to move the dismissal of an appeal waived the lack of bill of exceptions and stenographic notes, where clerk and judge certified that record contained substance of testimony. Refer *v. Refer*, 102 Mont. 121, 56 P. (2d) 750.

9750. What the court may review on an appeal from a judgment.

1935. Propriety of order appointing receiver in mortgage foreclosure, which was appealable, could not be considered on appeal from judgment. *Rock Island Plow Co. v. Cut Bank Implement Co.*, 101 Mont. 117, 53 P. (2d) 116.

9751. Ruling against respondent may be reviewed.

1939. Requirements of section 9732, as to time of taking appeal, apply to respondent seeking review of ruling against him. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

1939. The complaint as to costs awarded against respondent in favor of two defendants in whose favor a verdict was directed, can only be raised by cross-appeal. *Truzzolino Food Products Co. v. F. W. Woolworth Co.*, Mont., 91 P. (2d) 415.

1939. Plaintiff made a cross-assignment of error as to the courts granting a directed verdict as to two defendants. This is not properly before the court under this section, which has application only to cases in which the respondent makes cross-assignments of errors on rulings adverse to him and preserved in the bill of exceptions. *Truzzolino Food Products Co. v. F. W. Woolworth Co.*, Mont., 91 P. (2d) 415.

1939. In equity suit plaintiff's notice of cross-appeal was timely filed, where filed within statutory time after judgment signed by court and filed by clerk, though clerk had previously entered court's findings and conclusions of law as ministerial act, since latter did not constitute final judgment. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

1937. Errors respecting matters not before the supreme court on appeal may only be presented on cross-appeal. *Phelps v. Union Central Life Ins. Co.*, 105 Mont. 195, 71 P. (2d) 887.

1937. Where the plaintiff offered certain evidence, which was excluded, and defendant took appeal from adverse judgment, but plaintiff made no cross-assignments, the case was remitted to the trial court for a new trial, instead of dismissing, since cross-assignments, even if made, would not enable the supreme court to say that the errors in favor of the plaintiff were compensated by the errors against him, in the absence of the evidence itself. *Phelps v. Union Central Life Ins. Co.*, 105 Mont. 195, 71 P. (2d) 887.

1937. This section applies only to cases in which the respondent makes cross-assignments upon error or rulings adverse to him and preserved in the bill of exceptions, in order to enable the supreme court to determine whether those complained of by the appellant were compensated for or rendered harmless by reason of them. *Phelps v. Union Central Life Ins. Co.*, 105 Mont. 195, 71 P. (2d) 887.

1936. This section has application only to cases in which the respondent makes cross-assignments of errors on rulings adverse to him and preserved in a bill of exceptions in order to enable the reviewing court to determine whether those complained of by the appellant were compensated or rendered harmless by reason of them. The section was not intended to do away with cross-appeals in cases wherein a party feels himself aggrieved by rulings on matters separate and distinct from those sought to be reviewed by the appellant. *Osnes Livestock Co. v. Warren*, 103 Mont. 284, 62 P. (2d) 206, applying rule to water right case.

1936. Errors in the admission of improper evidence or in the permission of improper cross-examination may be held in and of themselves sufficiently prejudicial to justify the reversal of a judgment. *State v. Patton*, 102 Mont. 51, 55 P. (2d) 1290.

1936. Errors of the trial court in permitting improper cross-examination of the prosecutrix in bastardy proceeding and in the admission of evidence required reversal of a judgment of dismissal where evidence supporting judgment was meager and unconvincing. *State v. Patton*, 102 Mont. 51, 55 P. (2d) 1290.

1935. This section was not intended to do away with cross-appeals in cases wherein a party feels himself aggrieved by ruling on matters separate and distinct from that sought to be reviewed by appellant. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. Cross-assignments of error by claimant as respondent in compensation case on appeal from district court's decision were not considered by supreme court where he did not appeal and did not bring matter to lower court's attention by motion for new trial or otherwise. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

9752. Remedial powers of an appellate court.

1938. Damages refused where the appeal was not taken solely for delay. *O'Neil v. Industrial Accident Fund*, 107 Mont. 176, 81 P. (2d) 688.

CHAPTER 81

APPEALS TO DISTRICT COURT

9754. Appeal from judgment of justice's or police court.

1936. When timely motion for a new trial in a justice court is made, the motion suspends the judgment until the motion is disposed of; and the statutory time for appeal begins to run from the date of ruling on the motion and not from the date of the entry of judgment. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

1936. Where a defendant in the justice court attempts to appeal from a default judgment without waiting for a ruling on his motion to set aside the judgment the only effect of the appeal is an affirmation of the default judgment, as the appeal amounts to an abandonment of the motion; for the statute does not authorize the district court to try the motion anew, but merely to determine whether or not the lower court abused its discretion. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

1936. The district court can acquire no jurisdiction by appeal until the lower court has acted, and cannot try the case de novo unless it determines that the lower court abused its discretion in refusing to set aside the judgment on the showing made in support of the motion. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

1936. Section 9754 is a statute of limitations, and unless the appeal is taken within the time prescribed, the appellate court acquires no jurisdiction and the appeal must be dismissed. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

1935. Since there existed no other adequate, plain, or speedy remedy, including appeal, it was held that certiorari would lie to review an order of a justice of the peace setting aside levy of execution claimed to be in excess of jurisdiction. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

1935. In a justice of the peace court there is no appeal from an order made after judgment. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

1935. Appeals from justice of the peace courts are matters of statutory regulation, and one who claims the right must point out the statutory authority therefor. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

9755. Must be tried anew.

1937. Under section 9755, where question of jurisdiction of justice's court could have been raised on appeal from default judgment to the district a writ of review was dismissed. *Shaffroth v. Lamere*, 104 Mont. 175, 65 P. (2d) 610.

1936. Where a defendant in the justice court attempts to appeal from a default judgment without waiting for a ruling on his motion to set aside the judgment the only effect of the appeal is an affirmation of the default judgment, as the appeal amounts to an abandonment of the motion; for the statute does not authorize the district court to try the motion anew, but merely to determine whether or not the lower court abused its discretion. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

1936. A motion to set aside a default judgment, authorized by section 9187, and recognized as applying to a judgment in the justice court by section 9755, is akin to, or in effect, a motion for a new trial. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

1936. The district court can acquire no jurisdiction by appeal until the lower court has acted, and cannot try the case de novo unless it determines that the lower court abused its discretion in refusing to set aside the judgment on the showing made in support of the motion. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

1936. To the extent that the district court is required to reconsider the action of the justice court to determine whether the court abused the discretion vested in it, action on appeal is a review rather than a trial de novo on appeal from such a court. *Davis v. Bell Boy Gold Mining Co.*, 101 Mont. 534, 54 P. (2d) 563.

CHAPTER 85

MOTIONS AND ORDERS

9772. Order and motion defined.

1935. A motion is not made by filing an application in writing alone, but by the moving of the court viva voce to grant the order. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. A motion to tax costs by party objecting to adverse party's memo is an application for a court order, and must fairly apprise the court of the grounds upon which relief is sought. *Gahagan v. Gugler*, 100 Mont. 599 52 P. (2d) 150

CHAPTER 86

NOTICES AND FILING AND SERVICE OF PAPERS

9781. Service by mail, how.

1939. Where there was no claimed concealment by owner of leased premises of fact that they were occupied by more than one tenant, and no representations made by him as to the occupancy, and the agent negotiating the policy knew that they were occupied by more than one tenant, a public liability policy was not voided because it contained a clause rendering it inoperative if the premises were not "wholly in the care and custody of a single tenant." *Curtis v. Zurich General Accident & Liability Ins. Co.*, Mont., 89 P. (2d) 1038.

CHAPTER 87

COSTS AND DISBURSEMENTS — COST BILL — SUITS IN FORMA PAUPERIS

9787. When allowed, of course, to the plaintiff.

1936. Where the plaintiff, in water right case, failed to recover all rights he claimed and the judgment was reduced accordingly, each party should be required to pay his own costs in the trial court. *Osnes Livestock Co. v. Warren*, 103 Mont. 284, 62 P. (2d) 206.

1935. The right to recover costs is purely statutory, and one who successfully invokes such a right must point out the statute giving him such right. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

9788. Defendant's costs must be allowed, of course, in certain cases.

1935. The right to recover costs in purely statutory, and one who successfully invokes such a right must point out the statute giving him such right. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

9789. Costs—when in the discretion of the court.

1938. In an interpleader action under section 4095 it was held that the court properly apportioned the costs between the parties, except the interpleading warehouseman, who was innocent and not responsible for the litigation. *Rocky Mountain Elevator Co. v. Bammel*, 106 Mont. 407, 81 P. (2d) 673.

9791. Costs on appeal discretionary with the court, in certain cases, and when.

1939. The district court's action in entering judgment in accordance with the remittitur, and requiring each party to pay his own costs in both trial and supreme courts, was proper where the matter of costs was not brought to the attention of the latter court, nor passed upon by it, on modifying and affirming the judgment of the lower court, and was the only action that could be taken. *Lloyd v. City of Great Falls*, 107 Mont. 588, 87 P. (2d) 187.

9795. Costs in actions by or against an administrator, etc.

1938. In an action by a wage earner against an administrator for services rendered the deceased, attorney's fees were properly allowed as costs

despite the fact that the services were rendered to the deceased and not to the administrator, in view of section 9795, which allows costs against an administrator the same as against a person defending in his own right. *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643.

9796. Costs in a review other than by appeal.

1936. Memorandum of costs must be filed and served within five days from date of notice of decision on application for writ of supervisory control in supreme court rather than within that time from issuance of writ, and motion to strike memorandum not so filed and served was granted in *State ex rel. Clark v. District Court*, 103 Mont. 145, 61 P. (2d) 836.

9797. Costs of demurrer or motion.

1935. The provision of section 9797 has no application where the plaintiff obtains dismissal of his action after filing of a demurrer but before the demurrer is passed upon. *Graham v. Superior Mines*, 100 Mont. 427, 49 P. (2d) 443.

9798. Counsel fees on foreclosure of mortgage.

1935. The provision for attorney's fees are reciprocal and applicable to both plaintiff and defendant. *Graham v. Superior Mines*, 100 Mont. 427, 49 P. (2d) 443.

9802. What are costs and disbursements.

1938. The provision of section 3089 allowing a reasonable attorney's fee as part of the costs constitutes "an express provision of law," such as was anticipated by section 9802. *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643.

1938. Costs may not be allowed unless expressly authorized by statute. *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643.

1938. "This section is exclusive except in so far as certain cases are taken out of its operation by special statutes, and in the absence of statute, stipulation of the parties, or rule of court (assuming that such rule may be promulgated), attorney's fees are not so recoverable." *United States v. Seaboard Surety Co.*, 26 Fed. Supp. 681.

1936. Cost of typewriting briefs on appeal held included. *Gahagan v. Gugler*, 103 Mont. 521, 63 P. (2d) 145.

1936. Section 9802, relating to allowable cost items, construed so as to give effect to whole section, holding that allowable items are not to be restricted to those enumerated. *Gahagan v. Gugler*, 103 Mont. 521, 63 P. (2d) 145.

1935. The right to recover costs is purely statutory, and one who successfully invokes such a right must point out the statute giving him such right. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. Claimant for compensation under the workmen's compensation act held not entitled to reasonable expense of examination and report of physician as to claimant's physical condition as costs, since costs are entirely statutory and there is no provision for an allowance of this nature. *Lunardello v. Republic Coal Co.*, 101 Mont. 94, 53 P. (2d) 87.

1935. Sections 3084-3089, laws of 1919, chapter 11, are, in effect, an amendment of or addition to section 9802, and a general ranch hand comes within

the exception and not within the provisions of the act, and not entitled to recover an attorney's fee as a part of his costs in suit for wages. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. In opposition to costs for travel of witness, affidavit held not conclusion of law or fact, but statement of ultimate fact as to distance traveled by witness, without giving means of knowledge, or statement that if greater distance was traveled it was unnecessary. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. The court did not err in striking from the bill of costs an item for the service of summons where the sheriff's affidavit averred that the person serving the summons "is" under 21 years of age and not an officer, since if he "is" under such age he must have been so at the time of the service. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. On conflicting affidavits on motion to tax costs, determination of distance traveled by witness held conclusive on appeal. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. On question of litigant's good faith on motion to tax costs by party dissatisfied therewith, circumstances under which witness was called, necessity of his attendance, etc., may be considered. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. Unless it be shown that testimony of witness not called or examined was relevant, competent, or material, the adverse party cannot be charged with the expense of calling such witness as item of costs. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. Disallowance of expense for calling witnesses who did not testify, although they attended, held not error. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. This section is exclusive as to items of costs except in so far as certain cases are taken out of its operation by special statutes. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

9803. Bill of costs.

1936. This section applies to original proceedings in the supreme court as well as to proceedings in the district court. *State ex rel. Clark v. District Court*, 103 Mont. 145, 61 P. (2d) 836.

1936. Memorandum of costs must be filed and served within five days from date of notice of decision on application for writ of supervisory control in supreme court rather than within that time from issuance of writ, and motion to strike memorandum not so filed and served was granted in *State ex rel. Clark v. District Court*, 103 Mont. 145, 61 P. (2d) 836.

1935. Neither a motion to tax costs, nor the notice thereof, is a pleading, and is not to be judged by the strict rules of pleading, and an oversight or technicality which does not affect the substantial right of the parties should be disregarded. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. The motion to tax costs by party objecting to adverse party's memo must specifically show in what respects the taxation is claimed to be erroneous and point out the items objected to, unless they are not provided for by law. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. Where notice to tax costs by party objecting to adverse party's memo is filed in time, the motion and affidavits may be filed after the time prescribed for filing the notice. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. A notice of motion to tax costs by party objecting to memo of costs held not insufficient because it did not specify the items to be attacked. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. A motion to tax costs by party objecting to adverse party's memo is an application for a court order, and must fairly apprise the court of the grounds upon which the relief is sought. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. Where a party objected to the sufficiency of a notice to tax costs, and the court gave him ample time to file counter affidavits and brief, the court in proceeding to a decision on the merits of the motion did not commit error. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. A verified memorandum of costs and disbursements is prima facie evidence that the items were necessarily expended, and are properly taxable, unless, as a matter of law, they appear otherwise upon the face; and the burden of overcoming this prima facie case rests upon the adverse party, and the party filing a memorandum of costs is required to furnish further proof only in rebuttal. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. The requirement of notice to retax costs is to afford opposing counsel the opportunity to be present and intelligently to oppose the motion to be made, and should advise him of the contentions he must be prepared to meet. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. Such statutes as this are to be given a liberal construction in the interests of justice, and the paramount consideration is whether or not, on the record, the opposing counsel has been given an opportunity to be present and to fully present his opposition to the motion. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. Where the court reserved ruling on plaintiff's objection to defendant's motion to tax costs, the plaintiff did not waive his objection by proceeding to the merits. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. In opposition to costs for travel of witness, affidavit held not conclusion of law or fact, but statement of ultimate fact as to distance traveled by witness, without giving means of knowledge, or statement that if greater distance was traveled it was unnecessary. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. On conflicting affidavits on motion to tax costs, determination of distance traveled by witness held conclusive on appeal. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. On question of litigant's good faith on motion to tax costs by party dissatisfied therewith, circumstances under which witness was called, necessity of his attendance, etc., may be considered. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. Unless it be shown that testimony of witness not called or examined was relevant, competent, or material, the adverse party cannot be charged with the expense of calling such witness as item of costs. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

1935. Disallowance of expense for calling witnesses who did not testify, although they attended, held not error. *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

9806. Interest and costs included in judgment.

1935. Cited in *Gahagan v. Gugler*, 100 Mont. 599, 52 P. (2d) 150.

CHAPTER 88

GENERAL PROVISIONS

9829. State, counties, municipalities, officers, school trustees not required to give bonds.

1939. City asserting lien on portion of lot acquired by county under tax deed proceedings held not required to deposit amount of taxes, interest, and penalties in court in action by county to quiet title to lot. *Cascade County v. Weaver*, Mont., 90 P. (2d) 164.

CHAPTER 91

WRIT OF REVIEW

9836. Writ of review defined.

1937. Since the only return that may be made on a writ of review is the duly certified record, sections 9836-9846, the only question which can be presented for determination by the reviewing court must affirmatively appear therefrom. *Shaffroth v. Lamere*, 104 Mont. 175, 65 P. (2d) 610.

1937. The provisions of section 9066 apply to section 9041, and since in sections 9836-9846, relating to writs of review, nothing is found relative to the limitations of actions with reference to these proceedings, section 9866 is applicable and controlling in such proceedings. *Shaffroth v. Lamere*, 104 Mont. 175, 65 P. (2d) 610.

9837. When and by what courts granted.

1937. Under section 9755, where question of jurisdiction of justice's court could have been raised on appeal from default judgment to the district a writ of review was dismissed. *Shaffroth v. Lamere*, 104 Mont. 175, 65 P. (2d) 610.

1937. Applied in a proceeding for a writ of review to annul a default judgment of a justice of the peace, in *Shaffroth v. Lamere*, 104 Mont. 175, 65 P. (2d) 610.

1935. Since there existed no other adequate, plain, or speedy remedy, including appeal, it was held that certiorari would lie to review an order of a justice of the peace setting aside levy of execution claimed to be in excess of jurisdiction. *White v. Corbett*, 101 Mont. 1, 52 P. (2d) 156.

9838. Application for — how made.

1939. The president of a bank which was the petitioner in an application for a writ of certiorari, verified the petition for the writ. Held; a sufficient verification. *State ex rel. Union Bank & Trust Co. v. District Court for Lewis & Clark County*, Mont., 91 P. (2d) 403.

1938. On certiorari to review punishment for contempt for violation of a restraining order, the party punished is the party beneficially interested in such review, and the party initiating the contempt proceedings, and not the judge of the lower court, is the adverse party. *Pelletier v. Glacier County*, 107 Mont. 221, 82 P. (2d) 595.

9839. The writ to be directed to the inferior tribunal, etc.

1938. In certiorari proceedings to review punishment for civil contempt it was said that the judge of the inferior court could not answer or make return. *Pelletier v. Glacier County*, 107 Mont. 221, 82 P. (2d) 595.

1938. It is the duty of the clerk to prepare the transcript, although the stenographer, when required, shall transcribe the stenographic notes, but it is the right and power of the presiding judge to request the stenographer to make the entire transcript, as one of his implied duties, by reason of his official position as a court officer. *Pelletier v. Glacier County*, 107 Mont. 221, 82 P. (2d) 595.

CHAPTER 92

WRIT OF MANDATE

9848. When and by what court issued.

1939. The rule that where a cause is submitted to the court for final determination on an agreed statement of facts, it is immaterial what the form of action is, and relief which the facts warrant will be granted whatever the form of the action, held applicable in mandamus action to force predecessor in office to turn over property of office, where, though there was no formal agreed statement, the submission amounted thereto. *State ex rel. Casey v. Brewer*, Mont., 88 P. (2d) 49.

1939. When the petition makes out a prima facie right to an office in the petitioner in mandamus, and no claim thereto is made by the respondent, mandamus is the proper remedy to force his predecessor officer to turn over the books and funds pertaining to the office. *State ex rel. Casey v. Brewer*, Mont., 88 P. (2d) 49.

1938. Mandamus against the county board is the proper remedy of a relief applicant to compel the payment of relief where the board found the facts in his favor, and an appeal to the state board was not necessary. *State ex rel. Wilson v. Weir*, 106 Mont. 526, 79 P. (2d) 305.

1938. Mandamus will not issue against a public officer except upon a showing of a clear, legal right to the relief sought. *State ex rel. Sadler v. Evans*, 106 Mont. 286, 77 P. (2d) 394.

1938. As against a public officer, the writ of mandamus issues to compel the performance of an act which the law specially enjoins as a duty resulting from the office. *State ex rel. Sadler v. Evans*, 106 Mont. 286, 77 P. (2d) 394.

1938. When a court erroneously refuses to grant an order for a recount of votes to a candidate certified as defeated in an election under the recount statute, the writ is the proper remedy. *State ex rel. Ainsworth v. District Court*, 107 Mont. 370, 86 P. (2d) 5.

1938. In mandamus against a county assessor to compel him to enter on an application for registration of an automobile the full, true, and assessed valuation thereof it was held that the writ was appropriate to compel such action and that a petition was sufficient which alleged the defendant's willful and unlawful refusal to comply with a request therefor, even though the machine was assessed to a dealer from whom the applicant purchased it. *State ex rel. Sadler v. Evans*, 106 Mont. 286, 77 P. (2d) 394.

1938. Mandamus would not lie against a county treasurer to compel him to issue license plates for an automobile on which neither the dealer from whom the machine was purchased by the applicant nor the applicant had paid the taxes, even though the assessor had willfully and unlawfully refused to enter the true valuation of the machine on the application and the applicant did not offer to pay such taxes, as a clear legal right was not shown by the purchaser for the relief. *State ex rel. Sadler v. Evans*, 106 Mont. 286, 77 P. (2d) 394.

1938. Writ of mandate denied to compel a board of county commissioners to reconvene and make a contract with the relator's newspaper for county printing where the board had in its discretion awarded the contract to another paper, no impropriety in so doing being shown. *State ex rel. Bowler v. Board of County Com'rs*, 106 Mont. 251, 76 P. (2d) 648.

1936. A petition for a writ of mandamus to compel canvassing board to correct computation of vote held sufficiently to allege facts from which presumption arose that all official steps had been taken up to delivery of returns to board. *State ex rel. Lynch v. Batani*, 103 Mont. 353, 62 P. (2d) 565.

9849. Writ—when and upon what to issue.

1936. Although the relator in a petition for alternative writ of mandamus did not appeal from an order setting aside a previous order of the district court directing administratrix to convey certain land to the relator and confirming the sale, mandamus was the proper remedy to compel the administratrix to transfer the land, as an appeal from the setting-aside order would not have been equally convenient, beneficial, and effective as the remedy by mandamus, since favorable determination of the appeal would not have compelled the administratrix to do the act directed, namely, convey the land. *State ex rel. Eden v. Schneider*, 102 Mont. 286, 57 P. (2d) 783.

1936. Mandamus issued where neither proceedings under recount statute or contest statutes would have afforded adequate and speedy remedy to candidate alleging that the judges wrongfully disregarded tally sheets. *State ex rel. Lynch v. Batani*, 103 Mont. 353, 62 P. (2d) 565.

9852. The adverse party may answer under oath.

1936. Where one judge of a two-judge district issued an alternative writ of mandamus, and the relator, on learning, three days before the day set for the hearing to show cause, that the other judge would sit at such hearing, filed an affidavit of disqualification of such judge properly disregarded the affidavit on the ground that it was not filed in time, and properly proceeded to hear the issue as to the order to show cause, despite the fact that at such hearing the respondent filed a demurrer and motion to quash the writ, which were incidental to the return and which the judge overruled. *State ex rel. Eden v. Schneider*, 102 Mont. 286, 57 P. (2d) 783.

9853. If an essential question of fact is raised, the court may order a jury trial.

1936. A motion for a new trial in supreme court and not a petition for a rehearing, is the proper procedure to have a judgment allowing a peremptory writ of mandamus reviewed. *State ex rel. Lynch v. Batani*, 103 Mont. 353, 62 P. (2d) 565.

1936. Where one judge of a two-judge district issued an alternative writ of mandamus, and the relator, on learning, three days before the day set for the hearing to show cause, that the other judge would sit at such hearing, filed an affidavit of disqualification of such judge properly disregarded the affidavit on the ground that it was not filed in time, and properly proceeded to hear the issue as to the order to show cause, despite the fact that at such hearing the respondent filed a demurrer and motion to quash the writ, which were incidental to the return and which the judge overruled. *State ex rel. Eden v. Schneider*, 102 Mont. 286, 57 P. (2d) 783.

9855. Motion for new trial—where made.

1936. A motion for a new trial in supreme court and not a petition for a rehearing, is the proper procedure to have a judgment allowing a peremptory writ of mandamus reviewed. *State ex rel. Lynch v. Batani*, 103 Mont. 353, 62 P. (2d) 565.

9857. If no answer be made, or if the answer raise no material issue of fact, the hearing must be before the court.

1936. Where one judge of a two-judge district issued an alternative writ of mandamus, and the relator, on learning, three days before the day set for the hearing to show cause, that the other judge would sit at such hearing, filed an affidavit of disqualification of such judge properly disregarded the affidavit on the ground that it was not filed in time, and properly proceeded to hear the issue as to the order to show cause, despite the fact that at such hearing the respondent filed a demurrer and motion to quash the writ, which were incidental to the return and which the judge overruled. *State ex rel. Eden v. Schneider*, 102 Mont. 286, 57 P. (2d) 783.

9858. Damages, costs and peremptory mandate allowed applicant, when.

1938. Cited and applied to a writ of prohibition in *State ex rel. Williams v. Kemp*, 106 Mont. 444, 78 P. (2d) 585.

1937. A corporate collection agency is not entitled to attorney's fees in action to collect on a promissory note, since it is not entitled to practice law. *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

1936. In order for relator to recover damages in mandamus proceedings it is necessary for him to assert or prove his claim therefor, except where they are obvious from the facts shown. *State ex rel. Lynch v. Batani*, 103 Mont. 353, 62 P. (2d) 565.

1936. There was no necessity of proving that petitioner in mandamus was entitled to attorney fees where his attorney signed petition and performed services in the presence of the court. *State ex rel. Lynch v. Batani*, 103 Mont. 353, 62 P. (2d) 565.

CHAPTER 93

WRIT OF PROHIBITION

9861. Prohibition defined.

1939. "It is the office of the writ of prohibition to give complete relief." *State ex rel. King v. District Court*, 107 Mont. 476, 86 P. (2d) 755.

1937. The supreme court will not issue a writ of prohibition to arrest the proceedings of a trial court while acting within its jurisdiction. *State ex rel. Lloyd v. District Court*, 105 Mont. 281, 72 P. (2d) 1014.

1936. Where the board of equalization had not exceeded its jurisdiction in suspending licenses of alleged violators of the beer act regulations a writ of prohibition was issued to the district court directing it to annul its order restraining the board from further proceedings against such alleged violators and to dismiss the proceedings upon which the order was granted, since the court exceeded its jurisdiction in granting the order. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

1936. Relator's application for a writ of supervisory control of a district court which had ordered the equalization board to cease proceedings against alleged violators of the beer act was considered by the supreme court as an application for a writ of prohibition, since the question presented was whether the respondent court was acting in excess or without its jurisdiction. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

1936. A writ of prohibition is not, strictly speaking, a proceeding to review a proceeding in the lower court in its entirety, and is not a continuation of the proceeding in the lower court in the higher court, but is a new proceeding in the higher court to determine whether the lower court has exceeded or acted without its jurisdiction. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

1936. On application of the board of equalization for writ of prohibition against district court which had restrained the board from further proceedings against alleged violators of the beer act, the supreme court considered facts which were not presented to the district court, and refused to strike such facts from the application. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

1936. Where the district court had already exceeded its jurisdiction in a proceeding before it the supreme court was authorized to issue of prohibition against the court notwithstanding that matter was still pending in such court and applicants had not exhausted their remedies in that court. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

1936. The writ of prohibition arrests the proceedings of any tribunal when such proceedings are without or in excess of the jurisdiction of such tribunal. *State ex rel. Stewart v. District Court*, 103 Mont. 487, 63 P. (2d) 141.

9862. Where and when used.

1939. Prohibition is the proper remedy to stay further action of the trial court in a case where he has lost jurisdiction by failure to communicate his decision granting a motion for a new trial in the manner and statutory time required by section 9400. *State ex rel. King v. District Court*, 107 Mont. 476, 86 P. (2d) 755.

1939. Although an appeal may be taken from an order granting a new trial this remedy does not necessarily defeat the right to relief by prohibition. *State ex rel. King v. District Court*, 107 Mont. 476, 86 P. (2d) 755.

1939. The application for a writ of prohibition is made to the sound discretion of the court, and where it appears that the respondent court could not render a valid judgment because of lack of jurisdiction, the writ should issue to end litigation and save needless expense. *State ex rel. King v. District Court*, 107 Mont. 476, 86 P. (2d) 755.

1936. A remedy by appeal does not necessarily defeat the right relief by prohibition. *State ex rel. Redle v. District Court*, 102 Mont. 541, 59 P. (2d) 58.

1936. Where a default judgment was vacated and defendant permitted to file answer the plaintiff was a person beneficially interested in writ of prohibition to bar further proceedings in case, although he had transferred the property sold and judgment had been satisfied, since if the judgment be allowed to stand he would be obliged to prosecute the action without regard to the annulled judgment. *State ex rel. Redle v. District Court*, 102 Mont. 541, 59 P. (2d) 58, holding that respondent's assurance to the supreme court that he would not proceed further in the action, but would reply upon suit in equity for a determination of the questions involved did not alter the case, since that assurance could not bind the trial judge or his successor should the litigation outlive the jurisdiction of the trial judge.

1936. Application for writ of prohibition may be made on verified petition which contains the necessary facts to move the court. *State ex rel. Redle v. District Court*, 102 Mont. 541, 59 P. (2d) 58.

1936. That the verified petition for writ of prohibition does not contain statement that petitioner is the person beneficially interested does not preclude the issuance of the writ, since the question of interest is to be determined from the recitals of fact regardless of the conclusions of the relator or affiant. *State ex rel. Redle v. District Court*, 102 Mont. 541, 59 P. (2d) 58.

9864. Certain provisions of the preceding chapter applicable.

1938. Cited and applied to a writ of prohibition in *State ex rel. Williams v. Kemp*, 106 Mont. 444, 78 P. (2d) 585.

CHAPTER 94

ISSUANCE OF WRITS AND RULES OF PRACTICE AND APPEALS

9866. Certain provisions applicable.

1937. Code provisions relative to ordinary civil actions constitute the rules of practice in proceedings in mandamus. *State ex rel. Blenkner v. Stillwater County*, 104 Mont. 387, 66 P. (2d) 788.

1937. The provisions of section 9066 apply to section 9041, and since in sections 9836-9846, relating to writs of review, nothing is found relative to the limitations of actions with reference to these proceedings, section 9866 is applicable and controlling in such proceedings. *Shaffroth v. Lamere*, 104 Mont. 175, 65 P. (2d) 610.

CHAPTER 96

SUBMISSION OF CONTROVERSIES WITHOUT ACTION

9872. Controversies—how submitted without action.

1939. The rule that where a cause is submitted to the court for final determination on an agreed statement of facts, it is immaterial what the form of action is, and relief which the facts warrant will be granted whatever the form of the action, held applicable in mandamus action to force predecessor in office to turn over property of office, where, though there was no formal agreed statement, the submission amounted thereto. State ex rel. Casey v. Brewer, Mont., 88 P. (2d) 49.

CHAPTER 98

SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF REAL PROPERTY —FORCIBLE ENTRY AND UNLAWFUL DETAINER

9887. Forcible entry defined.

1939. Where title becomes important in determining the right to possession, evidence thereof is admissible in a justice court in a forcible entry, forcible detainer, or unlawful detainer action. State ex rel. Hamshaw v. Justice's Court, Mont., 88 P. (2d) 1.

1938. "Costs to nominee were not recoverable by either party at common law. They are creatures of the statute, and in this state the right to recover costs must be made to depend upon our code provisions." United States v. Seaboard Surety Co., 26 Fed. Supp. 681. Citing, Albrecht v. Albrecht, 83 Mont. 37, 48, 269 P. 158, 161.

9888. Forcible detainer defined.

1939. Where title becomes important in determining the right to possession, evidence thereof is admissible in a justice court in a forcible entry, forcible detainer, or unlawful detainer action. State ex rel. Hamshaw v. Justice's Court, Mont., 88 P. (2d) 1.

9889. Unlawful detainer defined.

1939. Where title becomes important in determining the right to possession, evidence thereof is admissible in a justice court in a forcible entry, forcible detainer, or unlawful detainer action. State ex rel. Hamshaw v. Justice's Court, Mont., 88 P. (2d) 1.

1938. Lessee from the United States of Indian lands held over beyond the terms of his lease preventing subsequent lessee from the United States taking possession. In an unlawful detainer suit brought by the United States triple damages were assessed against prior lessee. Upon appeal it was held that the United States was the proper party plaintiff and that triple damages were proper under the circumstances R. C. M., 1935, sections 8687, 9889 and 9901. Stoltz v. United States, 99 Fed. (2d) 283.

9891. What courts have jurisdiction.

1939. The provision of section 21 of article 8 of the constitution, conferring on the justice court jurisdiction to try cases of forcible entry and unlawful detainer, is not limited by the provision that the court shall not have jurisdiction in any case involving title or right of possession of real property, and the court may try such actions even if the right of possession is material and presented by the pleadings. State ex rel. Hamshaw v. Justice's Court, Mont., 88 P. (2d) 1.

1939. Section 21 of article 8 of the constitution comprehends forcible detainer actions as well as those for forcible entry and unlawful detainer, in defining the jurisdiction of the justice court. State ex rel. Hamshaw v. Justice's Court, Mont., 88 P. (2d) 1.

9899. Showing required of plaintiff in forcible entry or detainer—showing required of defendant.

1939. The provision of section 21 of article 8 of the constitution, conferring on the justice court jurisdiction to try cases of forcible entry and unlawful detainer, is not limited by the provision that the court shall not have jurisdiction in any case involving title or right of possession of real property, and the court may try such actions even if the right of possession is material and presented by the pleadings. State ex rel. Hamshaw v. Justice's Court, Mont., 88 P. (2d) 1.

1939. Where title becomes important in determining the right to possession, evidence thereof is admissible in a justice court in a forcible entry, forcible detainer, or unlawful detainer action. State ex rel. Hamshaw v. Justice's Court, Mont., 88 P. (2d) 1.

9901. What courts have jurisdiction.

1938. Lessee from the United States of Indian lands held over beyond the terms of his lease preventing subsequent lessee from the United States taking possession. In an unlawful detainer suit brought by the United States triple damages were assessed against prior lessee. Upon appeal it was held that the United States was the proper party plaintiff and that triple damages were proper under the circumstances R. C. M., 1935, sections 8687, 9889 and 9901. Stoltz v. United States, 99 Fed. (2d) 283.

CHAPTER 100

CONTEMPTS

9908. What acts or omissions are contempts.

1936. Contempt in publishing a false and grossly inaccurate report of a decision of the court is to the court, rather than to any judge thereof, and for the libel of an individual judge there exists a remedy, either by civil or criminal action. In re Nelson et al., 103 Mont. 43, 60 P. (2d) 365.

1936. Contempt in publishing a grossly inaccurate report of a decision of the supreme court held shown by the evidence. In re Nelson et al., 103 Mont. 43, 60 P. (2d) 365.

1936. Published report of court decision held grossly inaccurate. In re Nelson et al., 103 Mont. 43, 60 P. (2d) 365.

1936. In proceedings to punish for contempt for publishing a false or grossly inaccurate report of a court other articles in the same publication are admissible to corroborate evidence of intent of such publication. In *re Nelson et al.*, 103 Mont. 43, 60 P. (2d) 365, holding, also, that it was proper to allow judges of the court to testify on the question of intent, which was undisputed.

1936. The publisher of a grossly inaccurate report of a decision of the supreme court could be punished for contempt by the court for such publication made before the expiration of the period of ten days after the rendition of the decision, allowed for filing a petition for a rehearing under court rule 20, since the court still retained jurisdiction of the case, and it was still pending. In *re Nelson et al.*, 103 Mont. 43, 60 P. (2d) 365.

9910. A contempt committed in the presence of the court may be punished summarily—when not so committed, an affidavit or statement shall be made.

1936. An affidavit in proceedings to punish for the violation of an injunction prohibiting the sale and keeping of intoxicating liquor held sufficient. *State ex rel. Young v. District Court*, 102 Mont. 487, 58 P. (2d) 1243.

1936. If the charge in the affidavit is complete and substantial enough to justify a conclusive inference of knowledge and intent in the contemnor at the time the act was done, it is sufficient. *State ex rel. Young v. District Court*, 102 Mont. 487, 58 P. (2d) 1243.

1936. An affidavit charging directly and positively the violation of an injunction against selling of intoxicating liquor held not insufficient as charging only trivial violations. *State ex rel. Young v. District Court*, 102 Mont. 487, 58 P. (2d) 1243.

1936. An affidavit for prosecution of contempt proceedings held not insufficient because charging the acts on information and belief. *State ex rel. Young v. District Court*, 102 Mont. 487, 58 P. (2d) 1243.

1936. One who would charge contempt is required to aver directly that the particular acts constituting the contempt were done by the defendant. *State ex rel. Young v. District Court*, 102 Mont. 487, 58 P. (2d) 1243.

9916. Hearing.

1936. In contempt proceedings for publishing a false and grossly inaccurate report of a judicial decision, the respondent's sworn return stating that he had no intent to treat the court with contempt was held not conclusive where he offered no evidence in support thereof and was unwilling to submit the statement to the acid test of cross-examination. In *re Nelson et al.*, 103 Mont. 43, 60 P. (2d) 365.

9921. Judgment and orders in such cases final.

1937. The right of a court to hear and decide a matter carries with it the right to make a wrong decision, and where there is no right of direct appeal the law provides a remedy under section 9921 by writ of certiorari, which applies to contempt cases. *State ex rel. Lloyd v. District Court*, 105 Mont. 281, 72 P. (2d) 1014.

1935. Applied in *State ex rel. Tague v. District Court*, 100 Mont. 383, 47 P. (2d) 649.

CHAPTER 102

DISSOLUTION OF CORPORATIONS BY ACT OF DIRECTORS

9929. Voluntary dissolution of corporations.

1937. Beneficiary of a trust fund in bank for the purchase of realty from bank, which went into voluntary dissolution, could sue the directors as trustees although the bank had no assets, since plaintiff had a right to reduce his claim to judgment and take his chances of collection. *Fitzpatrick v. Stevenson*, 104 Mont. 439, 67 P. (2d) 310.

CHAPTER 103

EMINENT DOMAIN

Section

9939. Jurisdiction in district court of locus of property.

9934. What are public uses.

1936. Where a tunnel extended through the property of two adjoining mine owners neither could acquire the exclusive right to the use of that part of the tunnel located on the ground of the other, where both parties contended they were using, or intend to use, the tunnel for the same purpose, since neither could say his purpose was more useful than the other's. *State ex rel. Butte-Los Angeles Mining Co. v. District Court*, 103 Mont. 30, 60 P. (2d) 380.

9936. Private property defined — classes enumerated.

1936. Where a tunnel extended through the property of two adjoining mine owners neither could acquire the exclusive right to the use of that part of the tunnel located on the ground of the other, where both parties contended they were using, or intend to use, the tunnel for the same purpose, since neither could say his purpose was more useful than the other's. *State ex rel. Butte-Los Angeles Mining Co. v. District Court*, 103 Mont. 30, 60 P. (2d) 380.

1926. In order to acquire exclusive right to a tunnel under eminent domain the plaintiff must establish the necessity for it to have exclusive control and use thereof for mining operations, and that no other reasonable avenue was open or could be made accessible to it, and that the use for which it desired to subject the property of the defendant to its exclusive use is a more important public use than that for which defendant could lawfully use such property. *State ex rel. Butte-Los Angeles Mining Co. v. District Court*, 103 Mont. 30, 60 P. (2d) 380.

9939. Jurisdiction in district court of locus of property. All proceedings under this chapter must be brought in the district court of the county in which the property, or some part thereof, is situated. They must be commenced by filing a complaint and issuing a summons thereon. [L. '37, Ch. 22, § 1, amending R. C. M. 1935, § 9939. Approved and in effect February 17, 1937.]

9943. Power of court to appoint commissioners, etc.

1936. Where a tunnel extended through the property of two adjoining mine owners neither could acquire the exclusive right to the use of that part of the tunnel located on the ground of the other, where both parties contended they were using, or intend to use, the tunnel for the same purpose, since neither could say his purpose was more useful than the other's. *State ex rel. Butte-Los Angeles Mining Co. v. District Court*, 103 Mont. 30, 60 P. (2d) 380.

9945. The date with respect to which compensation shall be assessed, and the measure thereof.

1936. "Actual value" is the market value; the price that in all probability would result from fair negotiations where the seller is willing to sell and the buyer desires to buy. *State v. Lee*, 103 Mont. 482, 63 P. (2d) 135.

CHAPTER 107

PUBLIC ADMINISTRATOR

Section

10000. Public administrator's annual return—contents—posting copy.

10000. Public administrator's annual return—contents—posting copy. The public administrator must, once each year, make to the district court or a judge thereof, under oath, a return of all estates of decedents which have come into his hands, the value of the same:

1. The money which has come into his hands from each estate.
2. What he has done with it.
3. The amount of his fees and expenses incurred.
4. The balance, if any, remaining in his hands.
5. Post a copy of the same in the office of the clerk of the district court of the county. [L. '39, Ch. 116, § 1, amending R. C. M. 1935, § 10000. Approved and in effect March 3, 1939.]

Section 2 repeals conflicting laws.

10018. Jurisdiction of the court over the estate—when exercised.

1938. Cited in *State ex rel. Haynes v. District Court*, 106 Mont. 578, 81 P. (2d) 422.

1937. Citing sections 9008-9832 and 10018-10464 it was held that though the supreme court could not ascertain from the record on appeal what moved the trial court in the exercise of its power to appoint a guardian, the absence of testimony, touching the qualifications of minor's nominee to serve as guardian, appointed by the trial court, did not prevent the minor's father from taking an appeal, since he could have brought the evidence before the supreme court by means of a common-law or bystander's bill of exceptions as the basis for an appeal in the regular mode. *State ex rel. Stimatz v. District Court*, 105 Mont. 510, 74 P. (2d) 8.

CHAPTER 109

PROBATE OF WILLS—PETITION NOTICE AND PROOF

10026. Heirs and named executors to be notified how. .

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

10028. Hearing proof of will after proof of service of notice.

1936. A complaint, filed more than one year after the probate of a will, on the ground that the tetratrix had not signed the will in the presence of both attesting witnesses, as alleged in the probate petition, held demurrable, since the regularity of the execution of the will was directly involved in the probate proceedings, and the question of fraud was not extrinsic, but intrinsic fraud, if any there was. *Minter v. Minter*, 103 Mont. 219, 62 P. (2d) 233.

10030. Proof required when no contest.

1938. The proponent of a will must satisfy the court by a preliminary showing that a prima facie case is established according to the requirements of section 10030. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

1938. While a contestant has no part in the preliminary proof of the right to probate a will, no harm is done by the court permitting his counsel to take part in such proceeding to the extent of cross-examining the proponent's witnesses, as it would be an aid to the court. In *re Bragg's Estate*, 106 Mont. 132, 76 P. (2d) 57.

1936. A complaint, filed more than one year after the probate of a will, on the ground that the tetratrix had not signed the will in the presence of both attesting witnesses, as alleged in the probate petition, held demurrable, since the regularity of the execution of the will was directly involved in the probate proceedings, and the question of fraud was not extrinsic, but intrinsic fraud, if any there was. *Minter v. Minter*, 103 Mont. 219, 62 P. (2d) 233.

CHAPTER 110

CONTESTING PROBATE OF WILLS

10032. Contestant to file grounds of contest, and petitioner to reply.

1939. Though an order sustaining a demurrer to a petition for probate of a will also dismissed the petition, the order was not appealable, since it was neither a judgment nor an appealable order. In *re Augestad's Estate*, Mont., 88 P. (2d) 32.

1939. An order sustaining a demurrer to a petition for probate of a will is not appealable. In *re Augestad's Estate*, Mont., 88 P. (2d) 32.

1939. Since there is no provision for a demurrer to a petition for probate of a will, where one was filed it was the duty of the court to hear the petition on its merits, and the right of the petitioner to file and urge the petition and the sufficiency thereof were part of the merits. *In re Augestad's Estate*, Mont., 88 P. (2d) 32.

1939. Will contest statutory procedure must be strictly followed. *In re Augestad's Estate*, Mont., 88 P. (2d) 32.

1937. Cited in *In re Cissel's Estate*, 104 Mont. 306, 66 P. (2d) 779.

CHAPTER 111

PROBATE OF FOREIGN WILLS

Section

10039. Wills proved in other states to be recorded—when and where.

10039. Wills proved in other states to be recorded—when and where. All wills duly proved and allowed in any other of the United States, or in any foreign country or state, may be allowed and recorded in the district court of any county in which the testator shall have left any estate, or shall have been a resident at the time of his death. [L. '39, Ch. 44, § 1, amending R. C. M. 1935, § 10039. Approved February 21, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 112

CONTESTING WILLS AFTER PROBATE

10042. The probate may be contested within one year.

1936. An action to set aside the probate of a will on the ground of fraud, commenced after one year after probate, is addressed to the equitable jurisdiction of the court. *Minter v. Minter*, 103 Mont. 219, 62 P. (2d) 233.

1936. Orders and decrees made by the district court sitting in probate occupy no different status than orders and judgments in civil actions. *Minter v. Minter*, 103 Mont. 219, 62 P. (2d) 233.

1936. A complaint, filed more than one year after the probate of a will, on the ground that the testatrix had not signed the will in the presence of both attesting witnesses, as alleged in the probate petition, held demurrable, since the regularity of the execution of the will was directly involved in the probate proceedings, and the question of fraud was not extrinsic, but intrinsic fraud, if any there was. *Minter v. Minter*, 103 Mont. 219, 62 P. (2d) 233.

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will

because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

10048. Probate—when conclusive—one year after removal of disability given to infants and others.

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

10062. Acts of a portion of executors valid.

1936. While an administrator cannot bind the estate of a deceased partner, without the consent of his co-administrator, by an agreement that the surviving partner account to him for the profits resulting from the surviving partner's management of the partnership realty pending settlement of the partnership estate, such agreement would relieve the surviving partner from accounting to the estate for the share of the administrator as heir. *Thompson et al. v. Flynn*, 102 Mont. 446, 58 P. (2d) 769.

CHAPTER 115

PERSONS TO WHOM AND ORDER IN WHICH LETTERS OF ADMINISTRATION ARE GRANTED

Section

10068. Order of persons entitled to administer—partner not to administer.

10068. Order of persons entitled to administer—partner not to administer. Administration of estate of all persons dying intestate must be granted to some one or more of the persons hereinafter mentioned, and they are respectively entitled to preference thereto in the following order:

1. The surviving husband or wife, or some competent person whom he or she may request to have appointed.
2. The children.
3. The father or mother.
4. The brothers.
5. The sisters.
6. The grandchildren.
7. The next of kin entitled to share in the distribution of the estate.
8. The public administrator.
9. A creditor.
10. Any person legally competent.

If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of the estate. [L. '39, Ch. 219, § 1, amending R. C. M. 1935, § 10068. Approved and in effect March 17, 1939.

Section 3 repeals conflicting laws.

1939. The modern tendency is to give adoption statutes a liberal construction to effect their benevolent purposes and promote the welfare of the child. In *re Hoermann's Estate*; *Liptak v. Yule*, Mont., 91 P. (2d) 394.

1939. In an attack upon the validity of an adoption on the ground that the records of the proceeding failed to show certain steps required by statute, it was held that the judgment of the court is equally entitled to credit whether the jurisdiction is generally or specifically conferred. In *re Hoermann's Estate*; *Liptak v. Yule*, Mont., 91 P. (2d) 394.

CHAPTER 116

PETITION FOR LETTERS OF ADMINISTRATION AND ACTION THEREON

10078. Hearing of application.

1938. It lies within the discretion of the trial court to appoint the party as administrator who best entitled thereto. *State ex rel. McCabe v. District Court*, 106 Mont. 272, 76 P. (2d) 634.

1938. The refusal to appoint the public administrator as special administrator where the widow executrix had resigned and the administrator nominated by her had died was held within the court's jurisdiction though the public administrator urged that certain conveyances of the deceased were in fraud of his creditors, where there was no appeal from his ruling, and a writ of supervisory control was denied in the case, although it was held that such decision was not binding in case a proper reason for such action should be presented later. *State ex rel. McCabe v. District Court*, 106 Mont. 272, 76 P. (2d) 634.

10082. Letters may be granted to others than those entitled.

1939. In an attack upon the validity of an adoption on the ground that the records of the proceeding failed to show certain steps required by statute, it was held that the judgment of the court is equally entitled to credit whether the jurisdiction is generally or specifically conferred. In *re Hoermann's Estate*; *Liptak v. Yule*, Mont., 91 P. (2d) 394.

1939. The modern tendency is to give adoption statutes a liberal construction to effect their benevolent purposes and promote the welfare of the child. In *re Hoermann's Estate*; *Liptak v. Yule*, Mont., 91 P. (2d) 394.

CHAPTER 117

PROCEEDINGS FOR REVOCATION OF LETTERS OF ADMINISTRATION

10083. Revocation of letters of administration.

1937. A father who objected to the appointment of his minor son's nominee as guardian could not obtain relief by an extraordinary writ of the supreme court where there was available to him relief by petition to oust the guardian in the probate court, which would afford him a plain, speedy, and adequate remedy, which could be followed by a proper appeal to the supreme court. *State ex rel. Stimatz v. District Court*, 105 Mont. 510, 74 P. (2d) 8.

1937. If the appointment by the trial court of a minor's nominee as his guardian were based solely upon the right of the minor to appoint his own guardian the probate act gives the father the right to assert his preference at any time, sections 10083 et seq. *State ex rel. Stimatz v. District Court*, 105 Mont. 510, 74 P. (2d) 8.

1937. If the trial court merely followed the provisions of section 10402 in appointing a minor's nominee as guardian without regard to the question of fitness of his father, it follows that the qualifications of the latter were not actually passed upon by the court and are not by virtue of the proceedings *res adjudicata* on appeal by the father. *State ex rel. Stimatz v. District Court*, 105 Mont. 510, 74 P. (2d) 8.

CHAPTER 118

OATHS AND BONDS OF EXECUTORS AND ADMINISTRATORS

Section

- 10088. Bond of administrators and executors—form and requirement of—penalty—sureties—approval—lesser penalty by agreement of heirs, etc.
- 10089. Additional bonds of executor or administrator—when required—exception.
- 10096. When bond may be dispensed with—subsequent requirement of bond for cause.
- 10106.1. Excessive bond—reduction—petition.
- 10106.2. Order for reduction.
- 10106.3. Liability of former surety—new bond—effect.

10088. Bond of administrators and executors—form and requirement of—penalty—sureties—approval—lesser penalty by agreement of heirs, etc. Every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the state of Montana, with two or more sufficient sureties or a sufficient surety company, to be approved by the district court, or a judge thereof. In form, the bond must be joint and several, and the penalty must not be less than the value of the personal property and the annual rents and profits of real property belonging to the estate, nor more than twice the value of such personal property

and rents and profits; provided that upon written request of all the heirs, devisees or legatees and all being over twenty-one years of age and entitled to all of the estate upon distribution, the court may in its discretion fix the penalty of the bond at any sum less than the value of the personal property and the annual rents and profits of the real property belonging to the estate. [L. '37, Ch. 167, § 1, amending R. C. M. 1935, § 10088. Approved and in effect March 18, 1937.]

Section 2 repeals conflicting laws.

1937. A motion to quash an application for a writ of supervisory control was granted on ground that remedy by appeal was adequate where the probate court admitted a will to probate although a special finding of the jury was to effect that the will was induced by undue influence, no emergency being shown although the will exempted the executor from giving bond. *State ex rel. Furshong v. District Court*, 105 Mont. 37, 69 P. (2d) 119.

10089. Additional bonds of executor or administrator — when required — exception.

Except when it is expressly provided in the will that no bond shall be required of the executor, the court or judge must require an additional bond whenever the sale of any real estate belonging to an estate is ordered; but no such additional bond must be required when it satisfactorily appears to the court or judge that the penalty of the bond given before receiving letters or any bond given in place thereof, is equal to twice the value of the personal property remaining in or that will come into the possession of the executor or administrator, including the annual rents, profits, and issues of real estate, and twice the probable amount to be realized on the sale of the real estate ordered to be sold. [L. '37, Ch. 150, § 1, amending R. C. M. 1935, § 10089. Approved and in effect March 16, 1937.]

10096. When bond may be dispensed with — subsequent requirement of bond for cause.

When it is expressly provided in the will that no bond shall be required of the executor, or when it appears to the satisfaction of the court or judge that the estate has, at the time of hearing on the application for letters in such estate, no assets warranting the necessity of a bond, letters testamentary or letters of administration with the will annexed may issue, without any bond, unless the court or judge, for good cause, require one to be executed; but the executor or administrator with the will annexed may at any time afterward, if it appear from any cause necessary or proper, be required to file a bond as in other cases. [L. '37, Ch. 150, § 2, amending R. C. M. 1935, § 10096. Approved and in effect March 16, 1937.]

Section 3 repeals conflicting laws.

1937. A motion to quash an application for a writ of supervisory control was granted on ground that remedy by appeal was adequate where the probate court admitted a will to probate although a special finding of the jury was to effect that the will was induced by undue influence, no emergency being shown although the will exempted the executor from giving bond. *State ex rel. Furshong v. District Court*, 105 Mont. 37, 69 P. (2d) 119.

10106.1. Excessive bond — reduction — petition. Any person interested in any estate may by verified petition represent to the court or judge that any bond theretofore given in such estate is for a greater amount than the assets of the estate at the time of such petition justify. [L. '37, Ch. 179, § 1. Approved and in effect March 18, 1937.]

10106.2. Order for reduction. If the court or judge is satisfied from such verified petition or upon evidence introduced at a hearing thereon if such hearing be ordered by the court or judge, then such court or judge may make an order reducing the penalty of such existing bond, as to future acts of such executor or administrator, to an amount not less than the then value of the personal property and annual rents and profits of real estate belonging to the estate. [L. '37, Ch. 179, § 2. Approved and in effect March 18, 1937.]

10106.3. Liability of former surety — new bond — effect. If any order be made reducing the penalty of a bond the former surety shall remain liable for future acts, in the reduced amount, unless such executor or administrator give a new bond in the reduced amount. But on the approval by a court or judge of a new bond in the reduced amount the surety on the former bond shall not be liable for any subsequent act, default, or misconduct of the executor or administrator. [L. '37, Ch. 179, § 3. Approved and in effect March 18, 1937.]

Section 4 repeals conflicting laws.

CHAPTER 119

SPECIAL ADMINISTRATORS AND THEIR POWERS AND DUTIES

10107. Special administrators — when appointed.

1938. The refusal to appoint the public administrator as special administrator where the widow executrix had resigned and the administrator nominated by her had died was held within the court's jurisdiction though the public administrator urged that certain conveyances of the deceased were in fraud of his creditors, where there was no appeal from his ruling, and a writ of supervisory control was denied in the case, although it was held that such decision was not binding in case a proper reason for such action should be presented later. *State ex rel. McCabe v. District Court*, 106 Mont. 272, 76 P. (2d) 634.

1938. The power to appoint a special administrator is continuing and recurrent in its nature by reason of the provisions of the statute. *State ex rel. McCabe v. District Court*, 106 Mont. 272, 76 P. (2d) 634.

1938. The appointment of a special administrator is compulsory only where necessary for the preservation of the estate. *State ex rel. McCabe v. District Court*, 106 Mont. 272, 76 P. (2d) 634.

1938. A special administrator is only an emergency officer with very limited duties and authority. *State ex rel. McCabe v. District Court*, 106 Mont. 272, 76 P. (2d) 634.

1938. A showing of necessity for the appointment of a special administrator for the preservation of the estate must be made in order to justify his appointment. *State ex rel. McCabe v. District Court*, 106 Mont. 272, 76 P. (2d) 634.

CHAPTER 123

INVENTORY AND APPRAISEMENT— POSSESSION OF ESTATE

10139. Executor or administrator to deliver real estate to heirs or devisees, when.

1937. The decree of distribution of an estate is not the source of, but in a sense quiets, the title of the heirs to the property, although the actual title was previously vested in them, subject only to the lien of the debts of the deceased, expenses of the administration of his estate, family allowances, etc., and the distribution and settlement of the estate satisfies the lien of these charges. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

1937. The lien of a judgment against an heir of an intestate attached on the death of the intestate so that the heir's deed of his undivided interest in the inherited land was subject to the lien though such interest was not disclosed of record in the office of the county recorder, since it was neither concealed nor undisclosed. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

CHAPTER 125

PROVISIONS FOR THE SUPPORT OF THE FAMILY

10144. Widow and minor children may remain in decedent's house.

1936. Any bequest, devise, or allowance going to the widow or any other person taking any part of the decedent's estate, passes only by statute, and it therefore follows that the family allowance, or any other allowance, passing to one who takes any part of the decedent's estate, takes by statutory authority and receives property by virtue of the statute. *In re Wilson's Estate*, 102 Mont. 178, 56 P. (2d) 733.

1936. Under sections 10400.1 (8), 10400.4 (2), and 10144 et seq. a widow is precluded from making any other deductions or exemptions than those mentioned, including statutory years allowance. *In re Wilson's Estate*, 102 Mont. 178, 56 P. (2d) 733.

CHAPTER 128

CLAIMS AGAINST ESTATE

Section

10178. Limitation of actions on rejected claim.

10173. Time within which claims against an estate to be presented.

1937. A claim against the estate of a deceased person need not be presented before resorting to an equitable suit to enforce performance of the deceased's contract to make a will by fastening a trust upon the property agreed to be willed, and declaring claimant's right thereto as legatee. *Erwin v. Mark*, 105 Mont. 361, 73 P. (2d) 537, holding that the rule applied where the deceased had agreed to will a specific sum of money, as against contention that there was an adequate remedy at law for damages.

10176. Allowance and rejection of claims.

1939. Under this section claimant may institute action after ten-day period if no action is taken on claim. *Pierce v. Pierce*, Mont., 89 P. (2d) 269.

10178. Limitation of actions on rejected claim. When a claim is rejected, either by the executor or administrator, or the judge, the executor shall within ten (10) days thereafter, file such rejected claim with the clerk of court. Upon the filing of a rejected claim, the clerk of court shall, within three days thereafter, mail a notice of said rejection to the claimant, at his address as designated in said claim, and he shall file an affidavit of such mailing. The claimant must bring suit in the proper court against the executor or administrator within three (3) months after the date such rejected claim is filed, if it be then due, or within two (2) months after it becomes due, otherwise the claim shall be forever barred. When the claimant has been misled by the false statements of executor, administrator, or his attorney, or personal representatives, regarding the action taken by the executor or administrator on the claim whereby the claimant has been led to believe that his claim was either approved or not yet acted upon, and because of such false information he fails to bring suit within the time herein provided, the time for bringing suit on such claim is hereby extended for a period of three months from and after the discovery by the claimant of the falsity of such statements, provided that suit must be commenced prior to the approval of the final account of the executor or administrator. [L. '39, Ch. 192, § 1, amending R. C. M. 1935, § 10178. Approved and in effect March 17, 1939.]

Section 2 repeals conflicting laws.

1939. This section is a special statute of limitations, and one of its purposes is to compel claimants promptly to seek enforcement of their claims when

rejected in order that there may be a speedy ascertainment at least of the liabilities of the deceased. *Pierce v. Pierce*, Mont., 89 P. (2d) 269.

1939. Where claim was not filed until after three months after being rejected and mailed for filing, when the clerk found it among his papers, it was not filed within the meaning of the statute until actually filed. *Pierce v. Pierce*, Mont., 89 P. (2d) 269.

10180. Claims must be presented before suit.

1938. An action for wages against administrator of estate held "necessary" within section 3089, as against his claim that he had no alternative but allow the claim, since he could allow it in part or refer the matter to disinterested persons to be approved by the court or judge. *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643.

10184. Allowance of claim in part.

1938. An action for wages against administrator of estate held "necessary" within section 3089, as against his claim that he had no alternative but allow the claim, since he could allow it in part or refer the matter to disinterested persons to be approved by the court or judge. *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643.

10188. May refer doubtful claims—effect of referee's allowance or rejection.

1938. An action for wages against administrator of estate held "necessary" within section 3089, as against his claim that he had no alternative but allow the claim, since he could allow it in part or refer the matter to disinterested persons to be approved by the court or judge. *Swanson v. Gnose*, 106 Mont. 262, 76 P. (2d) 643.

CHAPTER 129

SALES OF PROPERTY OF ESTATE IN GENERAL — BORROWING MONEY — SALES OF PERSONAL PROPERTY

Section

10204. Probate proceedings — sale of personal property — notice — place of sale — conduct — responsibility of executor or administrator.

10195. Estate chargeable with debts — no priority.

1937. The decree of distribution of an estate is not the source of, but in a sense quiets, the title of the heirs to the property, although the actual title was previously vested in them, subject only to the lien of the debts of the deceased, expenses of the administration of his estate, family allowances, etc., and the distribution and settlement of the estate satisfies the lien of these charges. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

10204. Probate proceedings — sale of personal property — notice — place of sale — conduct — responsibility of executor or administrator. The sale of personal property must be made at public auction, after public notice given for at least ten days by notices posted in three public

places in the county, or by publication in a newspaper, or both, containing the time and place of sale, and a brief description of the property to be sold, unless for good reason shown the court, or a judge thereof, orders a private sale, or a shorter notice. Public sales of such property must be had at the courthouse door, or at the residence of the decedent, or at some other public place; but no sale shall be made of any personal property which is not present at the time of sale, and the sale must be for cash, unless the court or judge otherwise order. The sale of stocks and bonds, grains, or any other personal property, with the exception of livestock, having an established market, may be had at private sale, with or without notice in the discretion of the court or judge, and the executor or administrator shall be held accountable for the market value of such personal property at the time such sale was held. [L. '37, Ch. 77, § 1, amending R. C. M. 1935, § 10204. Approved and in effect March 3, 1937.]

Section 2 repeals conflicting laws.

CHAPTER 131

SALE OF REAL ESTATE AND OF CONTRACTS FOR PURCHASE OF LANDS

10227. When order of confirmation is to be made, and when not.

1936. An order setting aside confirmation of sale by administratrix, in accordance with court order, because the vendee did not pay cash, in accordance with the terms of order and sale, held res adjudicata and to prevent the issuance of mandamus to relator seeking to compel conveyance of property to him by administratrix on ground that the sale was valid. *State ex rel. Eden v. Schneider*, 102 Mont. 286, 57 P. (2d) 783.

1936. Where there is a compliance with the requirements of the statute in all particulars up to time of confirmation, the order of confirmation becomes a judgment and res adjudicata, and operates to divest the heirs of their title, and even cures all errors and irregularities not jurisdictional. *State ex rel. Eden v. Schneider*, 102 Mont. 286, 57 P. (2d) 783.

10228. Conveyances.

1936. Although the relator in a petition for alternative writ of mandamus did not appeal from an order setting aside a previous order of the district court directing administratrix to convey certain land to the relator and confirming the sale, mandamus was the proper remedy to compel the administratrix to transfer the land, as an appeal from the setting-aside order would not have been equally convenient, beneficial, and effective as the remedy by mandamus, since favorable determination of the appeal would not have compelled the administratrix to do the act directed, namely, convey the land. *State ex rel. Eden v. Schneider*, 102 Mont. 286, 57 P. (2d) 783.

10236. Contribution among legatees.

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

10243. Administrator and executor liable for misconduct in sale.

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

10244. Fraudulent sales.

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

10245. Limitation of actions for vacating sale, etc.

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

10246. To what cases preceding section not to apply.

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

CHAPTER 133

**GENERAL POWERS AND DUTIES OF
EXECUTORS AND ADMINISTRATORS—
TO RECOVER PROPERTY — TO
MAINTAIN ACTIONS —
OTHER POWERS**

10261. Surviving partner to settle up business—interest therein to be appraised—account to be rendered.

1936. Pending an accounting of the estate of a deceased partner, the surviving partner's right is something more than that of a tenant in common; he is legally in possession of the whole for the purpose of liquidating the affairs of the partnership, which still has a limited existence for that purpose, and neither the personal representatives nor the heirs of the deceased partner have right to the use or possession of the property. *Thompson et al. v. Flynn*, 102 Mont. 446, 58 P. (2d) 769.

1936. The general rules with respect to the rights of tenants in common, whatever they may be, has application during the period the surviving partner is in sole possession of the real estate as trustee for the winding up of the partnership affairs. It is, as a consequence, held that for such period the surviving partner must account to the estate of his deceased partner for the value of the use and occupation of the landed estate of the partnership. *Thompson et al. v. Flynn*, 102 Mont. 446, 58 P. (2d) 769.

1936. A surviving partner, as such, is entitled to the control and management of the property, and, until the partnership administration is closed, the possession of the real estate is adverse of the heirs, who otherwise are tenants in common with the surviving partner. *Thompson et al. v. Flynn*, 102 Mont. 446, 58 P. (2d) 769.

1936. Where there were no debts owing by a partnership estate there was no need of the surviving partner paying to the estate more than sufficient to satisfy the claims of the heirs who did not consent to the partner's management of the partnership realty, except it be for one-half the expense of closing the estate, and, one-half of the value of the use of the premises. *Thompson et al. v. Flynn*, 102 Mont. 446, 58 P. (2d) 769.

1936. Where a contract existed, at the time of the death of a partner, for the purchase of land by the partnership, and title was taken, after the death of the partner, by the surviving partner and the wife of the deceased partner, there being no outstanding debts owing by the partnership, the surviving partner was not required to account for the use of the property to the estate of the deceased partner. *Thompson et al. v. Flynn*, 102 Mont. 446, 58 P. (2d) 769.

1936. While an administrator cannot bind the estate of a deceased partner, without the consent of his co-administrator, by an agreement that the surviving partner account to him for the profits resulting from the surviving partner's management of the partnership realty pending settlement of the partnership estate, such agreement would relieve the surviving partner from accounting to the estate for the share of the administrator as heir. *Thompson et al. v. Flynn*, 102 Mont. 446, 58 P. (2d) 769.

CHAPTER 134

CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS

Section

10269. Petition for conveyance of real estate by executor or administrator—notice—publication—existing contract of record—written consent of heirs.
- 10279.9. Validation of sales—curative deeds—irregularities disregarded.

10269. Petition for conveyance of real estate by executor or administrator—notice—publication—existing contract of record—written consent of heirs. On the presentation of a verified petition by the executor or administrator, or by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated, the court, or a judge thereof, shall appoint a time and place for hearing the petition, and shall order notice thereof to be served on the executor or administrator personally when he is not the petitioner, and a copy thereof served upon each known heir, or, in the event of minor or incompetent heirs, upon the duly appointed and qualified guardian for such incompetent or minor, not less than twenty (20) days prior to the date of said hearing; or the court may order notice by publication for four successive weeks and [in] such newspaper in the county as the court may designate, provided, however, that if such contract was of record at the date of the death of the person executing such contract, then, in that event, notice of such hearing may be given by serving such notice on the executor or administrator personally, when he is not the petitioner, and posting such notice in three public places in the county where the court is held, for at least ten (10) days prior to the day fixed for the hearing; provided, further, that if the written consent of all the known heirs over the age of twenty-one (21) years and the guardian, duly authorized, of all minor or incompetent heirs be obtained and filed in the court before which said hearing is pending, then no other or further notices shall be required. [L. '37, Ch. 173, § 1, amending R. C. M. 1935, § 10269. Approved and in effect March 18, 1937.

Section 2 repeals conflicting laws.

10279.9 Validation of sales—curative deeds—irregularities disregarded. All sales by executors and administrators of their decedent's real and personal property, and all sales by guardians of their ward's real and personal property, in this state, which, previous to the date of this amendatory act, were made to purchasers for a valuable consideration, which consideration has been paid by

such purchasers to such executors or administrators or guardians, or their successors, in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain an executor's or administrator's or guardian's deed or conveyance to such purchaser for such real or personal property; and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said executor or administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity. [L. '39, Ch. 118, § 1, amending R. C. M. 1935, § 10279. Approved and in effect March 3, 1939.

Section 2 repeals conflicting laws.

CHAPTER 135

LIABILITIES AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS

10282. Executor or administrator to be charged with all estate, etc.

1935. An administrator is not an insurer, and therefore is liable only for losses which are the consequence of bad faith or the want of due diligence in handling the estate. In re Astibia's Estate, 100 Mont. 224, 46 P. (2d) 712.

10283. Not to profit or lose by estate.

1935. An administrator is not an insurer, and therefore is liable only for losses which are the consequence of bad faith or the want of due diligence in handling the estate. In re Astibia's Estate, 100 Mont. 224, 46 P. (2d) 712.

1935. While chargeable for losses the administrator is not entitled to profit by continuing a business without authority and is to account for the property as of the date received. In re Astibia's Estate, 100 Mont. 224, 46 P. (2d) 712.

10284. Uncollected debts without fault.

1935. An administrator is not an insurer, and therefore is liable only for losses which are the consequence of bad faith or the want of due diligence in handling the estate. In re Astibia's Estate, 100 Mont. 224, 46 P. (2d) 712.

1935. An administrator was charged with money lost by selling sheep on credit without security, together with interest thereon, as the indebtedness was not an account due the estate within the meaning of the above section. In re Astibia's Estate, 100 Mont. 224, 46 P. (2d) 712.

1935. Where an administrator made an unauthorized sale of sheep on credit without security he was charged with the debt and interest at 6 per cent, the legal rate, from the date it became due. In re Astibia's Estate, 100 Mont. 224, 46 P. (2d) 712.

10285. Expenses allowed executor or administrator—attorney's fees—compensation of executor provided in will.

1935. An administrator is not an insurer, and therefore is liable only for losses which are the consequence of bad faith or the want of due diligence in handling the estate. In re Astibia's Estate, 100 Mont. 224, 46 P. (2d) 712.

10287. Compensation of executors and administrators.

1936. An application for a writ of supervisory control to review an order of one district judge, of a two-judge district, annulling an order of the other judge who ordered the allowance of extraordinary executor's fees through inadvertance in not ascertaining that proper notice of the hearing for the fees had not been given to a coexecutor and residuary legatee, was dismissed in State ex rel. Regis v. District Court, 102 Mont. 74, 55 P. (2d) 1295.

1936. To attack an allowance of executor's fees for extraordinary services on the ground of inadvertence or fraud, a motion would properly be directed against the decree of settlement of the final account of the executor, rather than against the separate order of the court making the allowance. State ex rel. Regis v. District Court, 102 Mont. 74, 55 P. (2d) 1295, holding, also, that such allowance could be reached in the exercise of supervisory control, otherwise only by appeal.

CHAPTER 136

ACCOUNTING AND SETTLEMENT BY EXECUTORS AND ADMINISTRATORS

10288. Exhibit of receipts and disbursements and claims allowed.

1936. Cited in In re Russell's Estate, 102 Mont. 301, 59 P. (2d) 777.

10298. Vouchers for items less than twenty dollars — when dispensed with.

1936. Cited in In re Russell's Estate, 102 Mont. 301, 59 P. (2d) 777.

10300. When settlement is final, notice must so state—final settlement partition, and distribution.

1936. Notice of application for extraordinary executor's fees by posting in this state, where other executor and residuary legatee was known to applicant to be in a certain city outside of this state, was insufficient, and actual notice was held to be necessary; and recital in final decree that due notice of the hearing thereon had been given did not preclude consideration of fraud or inadvertence in making an order for such fees, in proceedings for writ of supervisory control. State ex rel. Regis v. District Court, 102 Mont. 74, 55 P. (2d) 1295.

1936. Notice of application for extraordinary executor's fees by posting held not valid as to co-executor and residuary legatee where notice by posting was not directed by the court, there being no special statutory provision for such notice. State ex rel. Regis v. District Court, 102 Mont. 74, 55 P. (2d) 1295.

10303. Settlement of accounts to be conclusive, when and when not.

1936. "Inadvertence" as used in this section means a want of care, inattention, carelessness, negligence, or oversight. State ex rel. Clark v. District Court, 102 Mont. 227, 57 P. (2d) 809.

1936. A motion to set aside an order awarding attorney's fee on ground of inadvertence was held timely when made 30 days after rendition of decree settling account, as the order, although a separate instrument, was a part of the proceedings for settlement of account. State ex rel. Clark v. District Court, 102 Mont. 227, 57 P. (2d) 809.

1936. Order fixing attorney's fee held secured as a result of constructive fraud extrinsic in character, and the district judge should have granted a motion to set it aside. State ex rel. Clark v. District Court, 102 Mont. 227, 57 P. (2d) 809.

1936. An application for a writ of supervisory control to review an order of one district judge, of a two-judge district, annulling an order of the other judge who ordered the allowance of extraordinary executor's fees through inadvertence in not ascertaining that proper notice of the hearing for the fees had not been given to a coexecutor and residuary legatee, was dismissed in State ex rel. Regis v. District Court, 102 Mont. 74, 55 P. (2d) 1295.

1936. To attack an allowance of executor's fees for extraordinary services on the ground of inadvertence or fraud, a motion would properly be directed against the decree of settlement of the final account of the executor, rather than against the separate order of the court making the allowance. State ex rel. Regis v. District Court, 102 Mont. 74, 55 P. (2d) 1295, holding, also, that such allowance could be reached in the exercise of supervisory control, otherwise only by appeal.

1936. Where no proper notice was given a residuary legatee of an application by an executor for fees for extraordinary services it was an "inadvertence" for the judge to allow such fees, as regards the propriety of annulment of the order by another judge, such legatee having no knowledge of the application. State ex rel. Regis v. District Court, 102 Mont. 74, 55 P. (2d) 1295.

1935. Rule of section does not apply where report of sales, though confirmed, showed that administrator had disobeyed orders of court. In re Astibia's Estate, 100 Mont. 224, 46 P. (2d) 712.

CHAPTER 137

THE PAYMENT OF DEBTS OF THE ESTATE

10307. Order of payment of debts.

1937. A claim against the estate of a deceased person need not be presented before resorting to an equitable suit to enforce performance of the deceased's contract to make a will by fastening a trust upon the property agreed to be willed, and declaring claimant's right thereto as legatee. Erwin v. Mark, 105 Mont. 361, 73 P. (2d) 537, holding that the rule

applied where the deceased had agreed to will a specific sum of money, as against contention that there was an adequate remedy at law for damages.

10309. Estate insufficient, a dividend to be paid.

1937. A claim against the estate of a deceased person need not be presented before resorting to an equitable suit to enforce performance of the deceased's contract to make a will by fastening a trust upon the property agreed to be willed, and declaring claimant's right thereto as legatee. *Erwin v. Mark*, 105 Mont. 361, 73 P. (2d) 537, holding that the rule applied where the deceased had agreed to will a specific sum of money, as against contention that there was an adequate remedy at law for damages.

CHAPTER 138

PARTITION AND DISTRIBUTION PRIOR TO FINAL SETTLEMENT OF ESTATE

10318. Payment to distributees upon giving bonds.

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

CHAPTER 139

DETERMINATION OF HEIRSHIP AND INTEREST IN THE ESTATE

10324. Proceedings to determine heirship.

1936. Widow of a lost heir held bound by decree in heirship proceedings in district court though she thought husband had died before the time of his actual death and did not discover her mistake soon enough to participate in estate proceedings, since decree was judgment in rem binding on all the world. In *re Baxter's Estate*, 101 Mont. 504, 54 P. (2d) 869.

1936. Since the court was bound to enter a decree of distribution in accordance with a prior decree of heirship, it was held that certain heirs could not attack assignments of their interests on account of alleged extrinsic fraud, in the proceedings for distribution, when they did not raise the issue in the heirship proceedings, though they had time to do so after they learned of the fraud. In *re Baxter's Estate*, 101 Mont. 504, 54 P. (2d) 869.

1936. The district court, when sitting as a probate court, is not limited by the restrictions of the former probate court, but has plenary powers in matters of probate and heirship. In *re Baxter's Estate*, 101 Mont. 504, 54 P. (2d) 869.

1936. The district court, sitting as a probate court, had jurisdiction to ascertain and determine not only the heirs and individuals who might take by succes-

sion or will, but also the rights of all other individuals who should claim a right by virtue of assignment. In *re Baxter's Estate*, 101 Mont. 504, 54 P. (2d) 869.

10325. Appearance of parties.

1936. Widow of a lost heir held bound by decree in heirship proceedings in district court though she thought husband had died before the time of his actual death and did not discover her mistake soon enough to participate in estate proceedings, since decree was judgment in rem binding on all the world. In *re Baxter's Estate*, 101 Mont. 504, 54 P. (2d) 869.

1935. Power of attorney by a resident of Spain authorizing Spanish consul general in San Francisco to represent him in heirship proceedings in Montana held sufficient under statute, and exclusion of proof of facts and customs in Spain tending to throw doubts on authority of counsel appointed by consul general held not reversible error. In *re Astibia's Estate*, 100 Mont. 224, 46 P. (2d) 712.

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

10326. Trial and judgment.

1936. Widow of a lost heir held bound by decree in heirship proceedings in district court though she thought husband had died before the time of his actual death and did not discover her mistake soon enough to participate in estate proceedings, since decree was judgment in rem binding on all the world. In *re Baxter's Estate*, 101 Mont. 504, 54 P. (2d) 869.

1936. Since the court was bound to enter a decree of distribution in accordance with a prior decree of heirship, it was held that certain heirs could not attack assignments of their interests on account of alleged extrinsic fraud, in the proceedings for distribution, when they did not raise the issue in the heirship proceedings, though they had time to do so after they learned of the fraud. In *re Baxter's Estate*, 101 Mont. 504, 54 P. (2d) 869.

CHAPTER 140

FINAL DISTRIBUTION OF THE ESTATE—DISCHARGE OF EXECUTOR OR ADMINISTRATOR

10327. Distribution of estate—how made and to whom.

1936. Notice of application for extraordinary executor's fees by posting in this state, where other executor and residuary legatee was known to applicant to be in a certain city outside of this state, was insufficient, and actual notice was held to be necessary; and recital in final decree that due notice of the hearing thereon had been given did not preclude consideration of fraud or inadvertence in making an order for such fees, in proceedings for writ of supervisory control. *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295.

10328. Order of distribution, contents and finality of.

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

10330. Decree to be made only after notice.

1936. Notice of application for extraordinary executor's fees by posting held not valid as to co-executor and residuary legatee where notice by posting was not directed by the court, there being no special statutory provision for such notice. *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295.

1936. Notice of application for extraordinary executor's fees by posting in this state, where other executor and residuary legatee was known to applicant to be in a certain city outside of this state, was insufficient, and actual notice was held to be necessary; and recital in final decree that due notice of the hearing thereon had been given did not preclude consideration of fraud or inadvertence in making an order for such fees, in proceedings for writ of supervisory control. *State ex rel. Regis v. District Court*, 102 Mont. 74, 55 P. (2d) 1295.

10333. Discovery of property.

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

CHAPTER 143**SETTLEMENT OF ACCOUNTS OF TRUSTEES AFTER DISTRIBUTION OF ESTATE****10352. Court not to lose jurisdiction of trusts by distribution—accounts of trustees.**

1936. Cited in *In re Roberts' Estate*, 102 Mont. 240, 58 P. (2d) 495.

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

10354. Appeal from order settling account of trustee.

1935. Action brought 18 years after probate of a will by an heir upon reaching majority to have property of deceased decreed to belong to the heirs which had been sold to satisfy creditors and to have decree of probate court set aside on the ground that it did not have jurisdiction to probate the will because no notice was served upon the plaintiff, then a minor. Certain heirs were omitted as parties defendant. Held, that the probate court did have jurisdiction under the statutes of Montana then in force. *Montgomery v. Gilbert*, 77 Fed. (2d) 39.

CHAPTER 144**MISCELLANEOUS — ORDERS — PROCESS — MINUTES — RECORDS — TRIALS AND APPEALS****Section**

10376. Powers of clerk in probate matters — guardianship—review by court.

10365. Rules of practice generally.

1938. Cited in *State ex rel. Haynes v. District Court*, 106 Mont. 578, 81 P. (2d) 422.

10366. New trials and appeals.

1939. Orders denying new trials are not appealable generally and the same rule applies to probate proceedings. In *re Blankenbaker's Estate*, Mont., 91 P. (2d) 401.

1939. An appeal does not lie from an order denying a rehearing or reappraisal. In *re Blankenbaker's Estate*, Mont., 91 P. (2d) 401.

1939. The filing of a motion for a new trial or rehearing of the order determining the inheritance tax does not affect the right to appeal from the order, or prolong the time within which an appeal therefrom could be taken. In *re Blankenbaker's Estate*, Mont., 91 P. (2d) 401.

1937. A motion to quash an application for a writ of supervisory control was granted on ground that remedy by appeal was adequate where the probate court admitted a will to probate although a special finding of the jury was to effect that the will was induced by undue influence, no emergency being shown although the will exempted the executor from giving bond. *State ex rel. Furshong v. District Court*, 105 Mont. 37, 69 P. (2d) 119.

1936. An appeal was required to be taken in 60 days from an "order and decree" entered in proceeding to terminate a trust, whether it was a decree or an order. In *re Roberts' Estate*, 102 Mont. 240, 58 P. (2d) 495.

10367. Within what time appeal must be taken.

1937. A motion to quash an application for a writ of supervisory control was granted on ground that remedy by appeal was adequate where the probate court admitted a will to probate although a special finding of the jury was to effect that the will was induced by undue influence, no emergency being shown although the will exempted the executor from giving bond. *State ex rel. Furshong v. District Court*, 105 Mont. 37, 69 P. (2d) 119.

1936. An appeal was required to be taken in 60 days from an "order and decree" entered in proceeding to terminate a trust, whether it was a decree or an order. *In re Roberts' Estate*, 102 Mont. 240, 58 P. (2d) 495.

10370. Court to appoint attorney for minor or absent heirs, devisees, or legatees or creditors — when and what compensation he is to receive.

1936. This section does not contemplate the appointment of an attorney in every probate proceeding wherein there are absent heirs; it is only when necessity arises, and the necessity can only arise when some one of the proceedings enumerated in the section is commenced. When the facts as disclosed on the proceedings show that there was no necessity within the meaning of the section, a mere recital in the order of appointment that there was a necessity does not justify such an appointment. *State ex rel. Hamilton v. District Court*, 102 Mont. 341, 57 P. (2d) 1227.

1936. The court has no right to appointment of an attorney for absent heirs on the mere presumption that one of them might be a minor, since parties are presumed to be of full age in the absence of a showing to the contrary. *State ex rel. Hamilton v. District Court*, 102 Mont. 341, 57 P. (2d) 1227.

1936. The purpose of the section is to provide representation for absent unrepresented heirs, and immediately upon being advised of the fact that such absent heirs have secured representation, the trial court should forthwith discharge its appointee. *State ex rel. Hamilton v. District Court*, 102 Mont. 341, 57 P. (2d) 1227.

10376. Powers of clerk in probate matters—guardianship—review by court. The clerk may make all necessary orders and issue notices of hearing for the probate of wills, both domestic and foreign, and letters of administration or guardianship, may order notices to creditors, appoint appraisers, file and approve all bonds, file and approve all claims against the estate, file and approve all counts of executors, administrators, and guardians, except final accounts, when no objections are made or filed thereto; and in the absence of the judge may hear and upon the hearing grant such letters, including letters testamentary, when no objections are made or filed, and make orders fixing time and place of hearing accounts and petitions for distribution, and may also make orders to show cause on applications for sale of real estate and orders to show cause or for notice of hearing in any probate or guardianship matter for the hearing of which an order to show cause or notice of hearing it [is] necessary. In the absence of the judge and when no objections are made or filed, the clerk may hear, and upon the hearing grant letters of administration or guardianship and letters testamentary, approve all bonds, claims against estates and all accounts of executors, administrators and guardians, except final accounts. The court or judge may at any time within thirty days

thereafter set aside or modify any of the orders herein provided for, but unless so set aside or modified, they shall have the same effect as if made by the judge or court. [L. '37, Ch. 178, § 1, amending R. C. M. 1935, § 10376. Approved and in effect March 18, 1937.]

Section 2 repeals conflicting laws.

CHAPTER 145

INHERITANCE TAX

10400.1. Taxes on transfer—when and how imposed.

1937. Under section 2295.8 where inheritance tax was collected from property of a decedent's estate by payment by beneficiary's personal representative and state had a lien therefor on property of the estate, it was deductible from amount of income tax on estate. *State ex rel. Davis v. State Board of Equalization*, 104 Mont. 52, 64 P. (2d) 1057.

1937. The penalty of 10 per cent interest mentioned in this section is limited to resort to the courts where litigation is unjustified, leaving to the courts the determination as to whether it was or not. *In re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

1937. Section 10400.1 (4, 8) is unconstitutional in so far as it attempts retroactively to permit all to deduct federal estate taxes paid, in determining the clear market value of property for state inheritance tax purposes, as applied to undistributed estates of persons dying prior to the operative date of the section. *In re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

1937. Section 10400.1, being inconsistent with the earlier section 10400.11, must if valid, prevail as to whether federal estate tax may be deducted in arriving at the fair market value of property for state inheritance tax purposes. *In re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

1937. The constitutionality of inheritance tax laws has been upheld by the supreme court of Montana upon the theory that it is a tax upon the right or privilege of receiving, and not a tax upon the property of the deceased. *In re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

1937. An inheritance tax is not a tax imposed upon the property of the estate itself, but upon the privilege of acquiring property by inheritance. *State ex rel. Davis v. State Board of Equalization*, 104 Mont. 52, 64 P. (2d) 1057.

1936. It must be presumed that the legislature, in enacting the inheritance tax law, intended to provide an act complete within itself for all purposes necessary to determine the persons to be taxed, the exemptions to be allowed, the rate of the tax, and all other essentials. *In re Wilson's Estate*, 102 Mont. 178, 56 P. (2d) 733.

1936. The rule that if a section of a statute be amended, such part of the old as is retained and carried forward into the amended section is not new, but is construed to have been the law at all times since it was first enacted, is applicable to statutes, as well as to sections of a statute, and under that rule that part of the 1897, 1921, and 1923 inheritance laws applying to a widow's exemptions are, in fact, amendments irrespective of the

fact that they now appear in our statutes as parts of a new act. In *re Wilson's Estate*, 102 Mont. 178, 56 P. (2d) 733.

1936. This act must be construed as a full and complete plan for inheritance taxation without reference to any other provisions of the statutes. In *re Wilson's Estate*, 102 Mont. 178, 56 P. (2d) 733.

1936. The inheritance tax law is a special law dealing with that subject alone and controls all general rules relating to any subject covered by its provisions. In *re Wilson's Estate*, 102 Mont. 178, 56 P. (2d) 733.

1936. Under sections 10400.1 (8), 10400.4 (2), and 10144 et seq. a widow is precluded from making any other deductions or exemptions than those mentioned, including statutory years allowance. In *re Wilson's Estate*, 102 Mont. 178, 56 P. (2d) 733.

10400.2. Primary rates, where not in excess of \$25,000.00.

1937. A legatee who was never legally adopted as the child of the deceased, the adoption papers being drawn up but never executed as required by law, was not entitled to the imposition of an inheritance tax as an adopted child, under section 10400.2 (1), although the deceased had referred to him as his child, educated him, and paid his expenses. In *re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

10400.4. Exemptions from first \$25,000.

1936. The rule that if a section of a statute be amended, such part of the old as is retained and carried forward into the amended section is not new, but is construed to have been the law at all times since it was first enacted, is applicable to statutes, as well as to sections of a statute, and under that rule that part of the 1897, 1921, and 1923 inheritance laws applying to a widow's exemptions are, in fact, amendments irrespective of the fact that they now appear in our statutes as parts of a new act. In *re Wilson's Estate*, 102 Mont. 178, 56 P. (2d) 733.

1936. Under sections 10400.1 (8), 10400.4 (2), and 10144 et seq. a widow is precluded from making any other deductions or exemptions than those mentioned, including statutory years allowance. In *re Wilson's Estate*, 102 Mont. 178, 56 P. (2d) 733.

1936. In passing this section the legislature must be presumed to have had in mind a ruling of the supreme court that moneys paid a widow from estate for family allowance do not pass by inheritance laws. In *re Wilson's Estate*, 102 Mont. 178, 56 P. (2d) 733.

10400.5. When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.

1937. Both by statute and decision of the supreme court of Montana it is the rule that upon death all of the property of the deceased, whether real or personal, vests immediately in those who are entitled by will or under the law to succeed to it, and the right of the state to an inheritance tax likewise vests at the same moment, though neither those entitled to succeed, nor the state may then know the extent or value of their respective rights. In *re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

1937. Section 10400.1 (4, 8) is unconstitutional in so far as it attempts retroactively to permit all to deduct federal estate taxes paid, in determining the clear market value of property for state inheritance tax purposes, as applied to undistributed estates of

persons dying prior to the operative date of the section. In *re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

10400.6. Discount—interest.

1938. An imposition of six per cent interest on augmented amount of estate tax which resulted from decision that federal taxes could not be deducted in determining fair market value of estate property was proper where the record was silent as to whether a bond was filed in conformity with section 10400.9, and the state failed to apply for a rehearing in the district court within sixty days, pursuant to section 10400.28. In *re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

1937. The penalty of 10 per cent interest mentioned in this section is limited to resort to the courts where litigation is unjustified, leaving to the courts the determination as to whether it was or not. In *re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

10400.9. Bond for deferred payment of tax.

1938. An imposition of six per cent interest on augmented amount of estate tax which resulted from decision that federal taxes could not be deducted in determining fair market value of estate property was proper where the record was silent as to whether a bond was filed in conformity with section 10400.9, and the state failed to apply for a rehearing in the district court within sixty days, pursuant to section 10400.28. In *re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

10400.11. Payment of tax on transfer of securities by foreign representative—duty of holder of securities or assets of nonresident decedent—apportionment of deductions—information to be given board of equalization—amount of tax to be retained on delivery of assets—penalties.

1937. The inclusion of the property or money which is consumed in the payment of the federal estate tax in computing the state tax is not imposing a tax upon the right to receive that particular property, but is the imposition of the tax upon the right to receive the property which the beneficiaries actually receive. In *re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

1937. Section 10400.11, being inconsistent with the earlier section 10400.11, must if valid, prevail as to whether federal estate tax may be deducted in arriving at the fair market value of property for state inheritance tax purposes. In *re Clark's Estate*, 105 Mont. 401, 74 P. (2d) 401.

10400.28. Rehearing within sixty days.

1939. An appeal does not lie from an order denying a rehearing or reappraisal. In *re Blankenbaker's Estate*, Mont., 91 P. (2d) 401.

1939. The filing of a motion for a new trial or rehearing of the order determining the inheritance tax does not affect the right to appeal from the order, or prolong the time within which an appeal therefrom could be taken. In *re Blankenbaker's Estate*, Mont., 91 P. (2d) 401.

1938. An imposition of six per cent interest on augmented amount of estate tax which resulted from decision that federal taxes could not be deducted in determining fair market value of estate property was proper where the record was silent as to whether a bond was filed in conformity with

section 10400.9, and the state failed to apply for a rehearing in the district court² within sixty days, pursuant to section 10400.28. In re Clark's Estate, 105 Mont. 401, 74 P. (2d) 401.

10400.47. Repealing clause—effect of repeal.

1937. Section 10400.47, not having been amended or re-enacted since 1923, cannot operate to preserve rights in the state or others which arose subsequent to its enactment. In re Clark's Estate, 105 Mont. 401, 74 P. (2d) 401.

CHAPTER 146

GUARDIANS OF MINORS

Section

10408.1. Guardian's bond—when may be dispensed with—later requirement.

10401. Judge to appoint guardian, when, and on what petition.

1938. Cited in State ex rel. Haynes v. District Court, 106 Mont. 578, 81 P. (2d) 422.

10402. When minor may nominate guardian—when not.

1937. If the trial court merely followed the provisions of section 10402 in appointing a minor's nominee as guardian without regard to the question of fitness of his father, it follows that the qualifications of the latter were not actually passed upon by the court and are not by virtue of the proceedings res adjudicata on appeal by the father. State ex rel. Stimatz v. District Court, 105 Mont. 510, 74 P. (2d) 8.

1937. If the appointment by the trial court of a minor's nominee as his guardian were based solely upon the right of the minor to appoint his own guardian the probate act gives the father the right to assert his preference at any time, sections 10083 et seq. State ex rel. Stimatz v. District Court, 105 Mont. 510, 74 P. (2d) 8.

1937. A father who objected to the appointment of his minor son's nominee as guardian could not obtain relief by an extraordinary writ of the supreme court where there was available to him relief by petition to oust the guardian in the probate court, which would afford him a plain, speedy, and adequate remedy, which could be followed by a proper appeal to the supreme court. State ex rel. Stimatz v. District Court, 105 Mont. 510, 74 P. (2d) 8.

1937. The court's discretion in the appointment of a guardian under section 10402 is restricted by section 10405. State ex rel. Stimatz v. District Court, 105 Mont. 510, 74 P. (2d) 8.

10405. Father or mother entitled to guardianship.

1937. The court's discretion in the appointment of a guardian under section 10402 is restricted by section 10405. State ex rel. Stimatz v. District Court, 105 Mont. 510, 74 P. (2d) 8.

1937. A father who objected to the appointment of his minor son's nominee as guardian could not obtain relief by an extraordinary writ of the supreme court where there was available to him relief by petition to oust the guardian in the probate court,

which would afford him a plain, speedy, and adequate remedy, which could be followed by a proper appeal to the supreme court. State ex rel. Stimatz v. District Court, 105 Mont. 510, 74 P. (2d) 8.

1937. If the trial court merely followed the provisions of section 10402 in appointing a minor's nominee as guardian without regard to the question of fitness of his father, it follows that the qualifications of the latter were not actually passed upon by the court and are not by virtue of the proceedings res adjudicata on appeal by the father. State ex rel. Stimatz v. District Court, 105 Mont. 510, 74 P. (2d) 8.

1937. If the appointment by the trial court of a minor's nominee as his guardian were based solely upon the right of the minor to appoint his own guardian the probate act gives the father the right to assert his preference at any time, sections 10083 et seq. State ex rel. Stimatz v. District Court, 105 Mont. 510, 74 P. (2d) 8.

10408.1. Guardian's bond—when may be dispensed with—later requirement. If, at the time of hearing any application for letters of guardianship, it satisfactorily appears to the court or judge that the assets of the estate for which such letters of guardianship are sought do not warrant the necessity of a bond on the part of the applicant, the court or judge may in its discretion order such letters to issue without bond; but such guardian may at any time afterward, if it appear from any cause necessary or proper, be required to file a bond as in other cases. [L. '37, Ch. 76, § 1. Approved and in effect March 3, 1937.]

Section 2 repeals conflicting laws.

CHAPTER 147

GUARDIANS OF INSANE AND INCOMPETENT PERSONS

Section

10416. Sale of right of dower of insane or incompetent married woman, or of dower of insane or incompetent widow.

10416.1. Power to mortgage right of dower of insane or incompetent married woman, or of dower of insane or incompetent widow—guardian.

10412. Guardians of insane and other incompetent persons.

1938. This section is valid under the constitutions of the United States and of Montana, despite the fact that it does not require notice to be given to any one other than the alleged incompetent. State ex rel. Haynes v. District Court, 106 Mont. 578, 81 P. (2d) 422.

1938. Notice must be given to the alleged incompetent of a proceeding to determine his mental condition for the purpose of taking charge of his person or property, or both. State ex rel. Haynes v. District Court, 106 Mont. 578, 81 P. (2d) 422.

1938. The district court of a county other than that in which an incompetent resides may appoint a guardian for his estate. State ex rel. Haynes v. District Court, 106 Mont. 578, 81 P. (2d) 422.

10413. Appointment by judge after hearing.

1938. The district court of a county other than that in which an incompetent resides may appoint a guardian for his estate. *State ex rel. Haynes v. District Court*, 106 Mont. 578, 81 P. (2d) 422.

1938. "A judgment against an incompetent at the time of its rendition and not represented by a guardian is not absolutely void, but is at most merely voidable, and will be sustained when collaterally attacked." *State ex rel. Haynes v. District Court*, 106 Mont. 578, 81 P. (2d) 422.

10415. Petition for restoration to capacity.

1937. The contention that since a juror was adjudged insane under sections 1431 to 1438, and committed to an insane asylum, he must be conclusively presumed to remain insane until restored to capacity under section 10415, or until obtaining a certificate under section 5685, held untenable, since an adjudication of insanity and commitment does not establish a conclusive, but a rebuttable presumption of insanity, section 5685 merely substituting for the presumption of sanity the presumption of insanity until the certificate therein provided for is obtained, and the question became one of fact as to whether the juror was competent mentally at the time of the trial. *State v. Bucy*, 104 Mont. 416, 66 P. (2d) 1049.

10416. Sale of right of dower of insane or incompetent married woman, or of dower of insane or incompetent widow. The right of dower of an insane married woman, or of an otherwise judicially declared mentally incompetent married woman, or dower of an insane widow or of an otherwise judicially declared mentally incompetent widow, may be sold by her guardian, and the title to the real estate transferred to the purchaser, under the direction of the court or judge, in the same manner and with like effect as the property of any insane person may be sold and transferred. [L. '37, Ch. 19, § 1, amending R. C. M. 1935, § 10416. Approved and in effect February 17, 1937.

Section 3 repeals conflicting laws.

Note. This section is reproduced exactly as it appears in the session laws.

10416.1. Power to mortgage right of dower of insane or incompetent married woman, or of dower of insane or incompetent widow—guardian. The right of dower of an insane married woman, or of an otherwise judicially declared mentally incompetent married woman, or dower of an insane widow, or of an otherwise judicially declared mentally incompetent widow, may be mortgaged by her guardian for the purpose of paying either debts, costs and charges of maintenance, charges of administration or to pay, reduce, extend, or renew some lien or mortgage already subsisting on said right of dower or dower in real property or for the purpose of benefiting or improving the real estate in which said insane or incom-

petent married woman, or said insane or incompetent widow, has a right of dower or dower and to obtain an order of court to mortgage such right of dower or dower interest, the guardian shall take the same proceedings provided by section 10427 of this code. The right of dower of an insane or incompetent married woman, or dower of an insane or incompetent widow, shall be deemed property for the purpose of authorizing the appointment of a guardian of her estate. [L. '37, Ch. 19, § 2, amending R. C. M. 1935, § 10416.1. Approved and in effect February 17, 1937.

Section 3 repeals conflicting laws.

Note. This section is reproduced exactly as it appears in the session laws.

CHAPTER 148

POWERS AND DUTIES OF GUARDIANS

10419. Guardian to manage his estate, maintain ward, and sell real estate.

1935. A guardian is a trustee of the funds which come into his hands, but is not an insurer thereof; he is required to manage the estate with prudence and without waste, and, if possible, to support the ward from the income and profits from the estate. *In re Welch's Estate and Guardianship*, 100 Mont. 47, 45 P. (2d) 681.

1935. In guardianship matters wherein the ward is a minor or an incompetent, and therefore unable to give direction or consent, the courts should be meticulous in protecting their interests and should apply the rules of liability of the guardian rigorously. *In re Welch's Estate and Guardianship*, 100 Mont. 47, 45 P. (2d) 681.

1935. Where guardian, not knowing that bank was insolvent, deposited ward's money therein on certificate of deposit maturing in one year with interest, with privilege of withdrawing money after six months at any time, he was not liable for loss due to failure of bank after the six months period dating from deposit. *In re Welch's Estate and Guardianship*, 100 Mont. 47, 45 P. (2d) 681.

1935. If the guardian loans his ward's funds without being authorized to do so by an order of court he assumes the risk of loss, and, it being shown that the loan is uncollectible, the amount thereof is properly chargeable to the guardian. *In re Welch's Estate and Guardianship*, 100 Mont. 47, 45 P. (2d) 681.

1935. Placing money in bank on certificate of deposit for fixed time at interest is a loan to bank, and guardian so doing is liable for loss if bank fails. *In re Welch's Estate and Guardianship*, 100 Mont. 47, 45 P. (2d) 681.

1935. Where guardian, as prudent man, places ward's funds in reputable bank subject to check, and bank fails, he is not liable for loss. *In re Welch's Estate and Guardianship*, 100 Mont. 47, 45 P. (2d) 681.

CHAPTER 149

SALE OF PROPERTY BY GUARDIANS AND DISPOSITION OF PROCEEDS

10428. May sell property in certain cases.

1938. Where the guardian traded ward's sheep for cows under agreement which obligated ward to pay the difference in value, a court order approving the trade was void, and did not divest the ward of his property, and no title passed to the owner of the cows. *Alexander v. Windsor*, 107 Mont. 152, 81 P. (2d) 685.

10431. Investments of proceeds of sales.

1935. In guardianship matters wherein the ward is a minor or an incompetent, and therefore unable to give direction or consent, the courts should be meticulous in protecting their interests and should apply the rules of liability of the guardian rigorously. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

1935. Where guardian, not knowing that bank was insolvent, deposited ward's money therein on certificate of deposit maturing in one year with interest, with privilege of withdrawing money after six months at any time, he was not liable for loss due to failure of bank after the six months period dating from deposit. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

1935. If the guardian loans his ward's funds without being authorized to do so by an order of court he assumes the risk of loss, and, it being shown that the loan is uncollectible, the amount thereof is properly chargeable to the guardian. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

1935. Placing money in bank on certificate of deposit for fixed time at interest is a loan to bank, and guardian so doing is liable for loss if bank fails. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

1935. Where guardian, as prudent man, places ward's funds in reputable bank subject to check, and bank fails, he is not liable for loss. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

10443. Court may order the investment of money of the ward.

1938. Where the guardian traded ward's sheep for cows under agreement which obligated the ward to pay the difference in value, a court order approving the trade was void, and did not divest the ward of his property, and no title passed to the owner of the cows. *Alexander v. Windsor*, 107 Mont. 152, 81 P. (2d) 685.

1935. In guardianship matters wherein the ward is a minor or an incompetent, and therefore unable to give direction or consent, the courts should be meticulous in protecting their interests and should apply the rules of liability of the guardian rigorously. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

1935. Where guardian, not knowing that bank was insolvent, deposited ward's money therein on certificate of deposit maturing in one year with interest, with privilege of withdrawing money after six months at any time, he was not liable for loss due to failure of bank after the six month period dating from deposit. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

1935. If the guardian loans his ward's funds without being authorized to do so by an order of court he assumes the risk of loss, and, it being shown that the loan is uncollectible, the amount thereof is properly chargeable to the guardian. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

1935. Placing money in bank on certificate of deposit for fixed time at interest is a loan to bank, and guardian so doing is liable for loss if bank fails. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

1935. Where guardian, as prudent man, places ward's funds in reputable bank subject to check, and bank fails, he is not liable for loss. In re Welch's Estate and Guardianship, 100 Mont. 47, 45 P. (2d) 681.

CHAPTER 153

FINANCIAL AID OF DEPENDENT CHILDREN (MOTHERS' PENSION ACT)

Section

10480-10487. Repealed.

10480-10487. Repealed. [L. '37, Ch. 82, Part VII, § II. See § 349A.75.]

CHAPTER 154

DEFINITIONS, KINDS AND DEGREES OF EVIDENCE

10491. The degree of proof required to establish facts.

1936. The rule against the use of abstract statements of law in instructions to the jury ordinarily does not apply where the trial court is giving instructions defining the meaning of words and phrases. *State v. Clark*, 102 Mont. 432, 58 P. (2d) 276, holding an instruction in the words of a statute defining "moral certainty" not objectionable.

10497. Indirect evidence defined.

1938. In civil actions facts may be established by indirect substantial evidence, under section 10497, and the Montana supreme court has held that the issues may rest entirely upon such evidence. In re Bragg's Estate, 106 Mont. 132, 76 P. (2d) 57.

CHAPTER 155

GENERAL PRINCIPLES OF EVIDENCE

10505. One witness sufficient to prove a fact.

1938. While two attesting witnesses are indispensable to the making of a valid will, yet the satisfactory testimony of one witness entitles a will to probate. In re Bragg's Estate, 106 Mont. 132, 76 P. (2d) 57.

10508. Witness presumed to speak the truth.

1938. The jurors are the sole judges of the credibility of the witnesses in a criminal case, and their power to pass thereon must not be exercised arbitrarily, but in subordination to the rules of evidence. *State v. Espelin*, 106 Mont. 231, 76 P. (2d) 629.

1937. The jurors are the exclusive judges of the weight and credibility of the evidence. *Freeman v. Withers*, 104 Mont. 166, 65 P. (2d) 601, applying the statute in an action for wages by an oil driller.

10509. One person not affected by acts of another.

1937. In an action to quiet title to an oil and gas lease where the defendant claimed that the plaintiff's lessor had placed in escrow a lease to the defendant before the execution of the plaintiff's lease, it was held that evidence of negotiations between the defendant and the lessor after the plaintiff's lease became effective was inadmissible. *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586.

10510. Declarations of predecessor in title evidence.

1937. In an action to quiet title to an oil and gas lease where the defendant claimed that the plaintiff's lessor had placed in escrow a lease to the defendant before the execution of the plaintiff's lease, it was held that evidence of negotiations between the defendant and the lessor after the plaintiff's lease became effective was inadmissible. *Nadeau v. Texas Oil Co.*, 104 Mont. 558, 69 P. (2d) 586.

10511. Declarations which are a part of the transaction.

1938. A statement by an employee, since deceased, that he intended to send his pay checks to his parents held admissible as part of the res gestae on the question major dependents. *Ross v. Industrial Accident Board*, 106 Mont. 486, 80 P. (2d) 362.

10514. Declaration of decedent evidence against his successor in interest.

1936. Cited in *Welch v. Thomas*, 102 Mont. 591, 61 P. (2d) 404.

10515. When part of the transaction proved, the whole is admissible.

1937. Applied in *Rasmussen v. O. E. Lee & Co., Inc.*, 104 Mont. 278, 66 P. (2d) 119.

1935. Applied in suit on insurance policy. *McGonigle v. Prudential Ins. Co.*, 100 Mont. 203, 46 P. (2d) 687.

10516. Contents of writing — how proved.

1936. Plaintiff in action to set aside default judgment had right to testify from memoranda prepared by him for defense in the action in which he was defaulted. *Stocking v. Charles Beard Co.*, 102 Mont. 65, 55 P. (2d) 949.

10519. Construction of statutes and instruments — general rule.

1938. Cited in *State ex rel. Haynes v. District Court*, 106 Mont. 578, 81 P. (2d) 422.

1938. "It is not the province of this court or of any other court to assume to legislate by judicial interpretation, and to create in favor of any individual

or any class of people an exception to the limitation set by the legislature." *Taylor v. Rann*, 106 Mont. 588, 80 P. (2d) 376.

1938. "Courts cannot make exceptions to the statute of limitations in favor of particular persons or special cases, or to meet the hardships resulting from its application to the facts of a given case." *Taylor v. Rann*, 106 Mont. 588, 80 P. (2d) 376.

1938. The courts should not adopt one or another rule as to whether the statute of limitations begins to run, against an action for seduction, at the time of the first or last act of intercourse, according to their notions as to the equities of the case. *Taylor v. Rann*, 106 Mont. 588, 80 P. (2d) 376.

1938. Cited in *Taylor v. Rann*, 106 Mont. 588, 80 P. (2d) 376, holding that a civil action for seduction was barred by the statute of limitations where instituted more than two years after the first act of intercourse.

1938. In the construction of an instrument the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. *United States v. Seaboard Surety Co.*, 26 Fed. Supp. 681. Citing, *Gibbons v. Huntsinger*, 105 Mont. 562, 573, 74 P. (2d) 443, 449.

1937. The phrase "registered vote," in section 1622.1, means voters who were registered and entitled to vote at the last general election, as distinguishable from voters who actually voted thereat. *State ex rel. Durland v. Board of County Commissioners*, 104 Mont. 21, 64 P. (2d) 1060.

1937. Where an insurance policy carried no clause of nonliability in case property insured was burned by the insured while insane, the insurer could not, in such a case, set off insured's tort against recovery for fire loss. *Hier v. Farmers Mutual Ins. Co.*, 104 Mont. 471, 67 P. (2d) 831.

1937. An unsuccessful candidate for the office of district judge comes within the purview of the provisions of sections 828.1 et seq. in regard to contesting elections. *State ex rel. Riley v. District Court*, 103 Mont. 576, 64 P. (2d) 115.

1936. The district court, sitting as a probate court, had jurisdiction to ascertain and determine not only the heirs and individuals who might take by succession or will, but also the rights of all other individuals who should claim a right by virtue of assignment. In *re Baxter's Estate*, 101 Mont. 504, 54 P. (2d) 869.

1936. Section 9802, relating to allowable cost items, construed so as to give effect to whole section, holding that allowable items are not to be restricted to those enumerated. *Gahagan v. Gugler*, 103 Mont. 521, 63 P. (2d) 145.

1936. The workmen's compensation act must be read as a whole, and every provision and part thereof given proper and harmonious consideration. *Koppang v. Sevier*, 101 Mont. 234, 53 P. (2d) 455.

1936. Words and phrases in act amendatory of workmen's compensation act must be understood in the light of the full context of the chapter and construed in accordance with statutory rules; they must be taken to mean something practical, reasonable, and consonant with the declared intention of the legislative body. *Koppang v. Sevier*, 101 Mont. 234, 53 P. (2d) 455.

1936. Where money was given to bank in trust to pay interest to other trustees for beneficiary two trusts were created—one for principal sum and one for interest—by trust memorandum. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

1936. A statute cannot be operative if it is necessary to read something into it in order to make it understandable or workable. In re Baxter's Estate, 101 Mont. 504, 54 P. (2d) 869.

1935. Section 11410, in regard to obtaining money by false pretences, does not by its terms limit its operation to persons of ordinary caution and prudence, as was the common-law crime limited, but applies to all persons, and to read the common-law rule into the statute would violate section 10519, on construction of statutes. State v. Foot, 100 Mont. 33, 48 P. (2d) 1113.

10520. The intention of the legislature or parties.

1937. The statement in this section that "the fees herein prescribed shall be paid annually" was in the bill as originally introduced, but as finally passed the tax was made payable quarterly, allowing quarterly exemptions of \$3,000, inadvertently leaving the former provision in the statute. Since the provisions requiring payments quarterly are specific and the provision providing for annual payment is general, the former control. State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P. (2d) 995, holding, also, that an obvious error of the legislature may be corrected by the courts to carry out the manifest intent of the legislature.

1937. Such a construction must be placed on 1783 et seq. as will make it workable in conformity with the apparent legislative intent. State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P. (2d) 619.

1937. The phrase "registered vote," in section 1622.1, means voters who were registered and entitled to vote at the last general election, as distinguishable from voters who actually voted thereat. State ex rel. Durland v. Board of County Commissioners, 104 Mont. 21, 64 P. (2d) 1060.

1936. Cited in Snider v. Carmichael, 102 Mont. 387, 58 P. (2d) 1004.

1936. In the construction of a statute the primary duty of the court is to give effect to the intention of the legislature in enacting it. In re Wilson's Estate, 102 Mont. 178, 56 P. (2d) 733.

1936. In action by grantor to have a deed declared a mortgage, the grantor's testimony as to what her intention was in giving deed was held admissible. Welch v. Thomas, 102 Mont. 591, 61 P. (2d) 404.

10525. Of two constructions, which preferred.

1936. Use of the word "merged" in second joint adventure contract for the running and handling of sheep held not to revoke a prior contract, but to make the subsequent contract supplementary to the first. Snider v. Carmichael, 102 Mont. 387, 58 P. (2d) 1004.

10527. Construction in favor of natural right preferred.

1936. Use of the word "merged" in second joint adventure contract for the running and handling of sheep held not to revoke a prior contract, but to make the subsequent contract supplementary to the first. Snider v. Carmichael, 102 Mont. 387, 58 P. (2d) 1004.

10529. Evidence confined to material allegations.

1935. Section applied to cross-examination of beneficiary of insurance policy in regard to defense of cancellation of policy for nonpayment of premium where matter was not covered on direct examination. McGonigle v. Prudential Ins. Co., 100 Mont. 203, 46 P. (2d) 687.

1935. Court's discretion as to latitude of cross-examination will not be reviewed on appeal where no manifest abuse is shown. McGonigle v. Prudential Ins. Co., 100 Mont. 203, 56 P. (2d) 687.

10531. Facts which may be proved on trial.

1939. The opinion of hospital nurses as to the mental condition of the testator was admissible though they had not seen him until he was brought to the hospital. In re Sales' Estate, Mont., 89 P. (2d) 1043.

1939. The lack of acquaintance and opportunity for observation of a testator merely affected the weight of testimony of those present at the execution of a will, as to his mental condition, but not its admissibility. In re Sales' Estate, Mont., 89 P. (2d) 1043.

1939. Subdivision 12 of this section applied to custom in brokerage and banking business to explain order to deliver stock to bank. Healy v. First Nat. Bank of Great Falls, Mont., 89 P. (2d) 555.

1937. In an action on a policy of insurance covering total and permanent disability, testimony of a physician explanatory of the character of the plaintiff's injuries with the opinion that the plaintiff could not engage in an occupation requiring physical effort, such as required by a veterinarian, held admissible under subdivision of this section. Devore v. Mutual Life Ins. Co., 103 Mont. 599, 64 P. (2d) 1071.

CHAPTER 156

JUDICIAL NOTICE OF FACTS

10532. Certain facts of general notoriety assumed to be true—specification of such facts.

1937. In action on a note, the complaint setting out the note in haec verba endorsement showing payment of interest within the time of the statute of limitations, held sufficient to toll the statute. Matteson v. Ackerson, 104 Mont. 239, 66 P. (2d) 797.

1936. The court must take judicial notice of original certificate of the comptroller of the currency appointing a receiver for a national bank when produced in court, but a certified copy of a record thereof as filed in the office of the county clerk and recorder, or the record itself, would not make it admissible in evidence in the absence of proof of execution from the custodian of the original. Kibble v. Morris, 101 Mont. 308, 53 P. (2d) 1150.

1936. The statutes of the state must be judicially noticed by the courts. Lillis v. City of Big Timber, 103 Mont. 206, 62 P. (2d) 219.

1935. It is properly within the realm of judicial knowledge that the greater portion of the time of firemen when on duty is devoted to holding themselves in readiness to answer a call if the necessity arises, and during such waiting periods they are not exercising any function on behalf of the city, but rather the city is exercising its proprietary right over their time. State ex rel. Kern v. Arnold, 100 Mont. 346, 49 P. (2d) 976.

CHAPTER 156A

JUDICIAL NOTICE OF FOREIGN LAWS— OTHER STATES AND COUNTRIES

Section

- 10532.1. Judicial notice of foreign laws—statutes of sister states—common law.
- 10532.2. How information obtained—aid of counsel.
- 10532.3. Question for court—review.
- 10532.4. Notice to adverse party—request to court to take notice.
- 10532.5. Laws of foreign countries—question for court—no judicial notice.
- 10532.6. Construction of act—purpose.
- 10532.7. Short title.

10532.1. Judicial notice of foreign laws—statutes of sister states—common law. Every court of this state shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States. [L. '37, Ch. 60, § 1. Approved and in effect February 25, 1937.

10532.2. How information obtained—aid of counsel. The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information. [L. '37, Ch. 60, § 2. Approved and in effect February 25, 1937.

10532.3. Question for court—review. The determination of such laws shall be made by the court and not by the jury, and shall be reviewable. [L. '37, Ch. 60, § 3. Approved and in effect February 25, 1937.

10532.4. Notice to adverse party—request to court to take notice. Any party may also present to the trial court any admissible evidence of such laws, but, to enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse parties either in the pleadings or otherwise. [L. '37, Ch. 60, § 4. Approved and in effect February 25, 1937.

10532.5. Laws of foreign countries—question for court—no judicial notice. The law of a jurisdiction other than those referred to in section 1 [10532.1] shall be an issue for the court, but shall not be subject to the foregoing provisions concerning judicial notice. [L. '37, Ch. 60, § 5. Approved and in effect February 25, 1937.

10532.6. Construction of act—purpose. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [L. '37, Ch. 60, § 6. Approved and in effect February 25, 1937.

10532.7. Short title. This act may be cited as the uniform judicial notice of foreign law act. [L. '37, Ch. 60, § 7. Approved and in effect February 25, 1937.

Section 8 repeals conflicting laws.

CHAPTER 157

WITNESSES

10535. Persons who cannot be witnesses.

1937. In an action against a corporation the court said that the trial court should not admit the evidence of a witness as to what a deceased agent of the corporation said to the plaintiff in regard to his powers to act for the corporation until sufficient other testimony has been admitted to warrant the court, in the exercise of its discretion, to render a ruling in favor of the questionable testimony, which discretion must be exercised with caution so that injustice will not be done. *Phelps v. Union Central Life Ins. Co.*, 105 Mont. 195, 71 P. (2d) 887.

1937. In action to recover alleged overpayment to bank evidence of a conversation between a bank officer and the plaintiff's deceased husband, and in explanation of a credit on the bank books, held admissible where without such admission injustice might result. *Pankovich v. Little Horn State Bank*, 104 Mont. 394, 66 P. (2d) 765.

Subdivision 3.

1938. In an action in the nature of specific performance of a contract made by the deceased not to change her will which devised and bequeathed all her property to the plaintiff in consideration that the latter take care of the deceased during her lifetime it was held that the court did not abuse its discretion in admitting in evidence oral declarations made by the deceased to the plaintiff substantiating his claim, after all other evidence had been put in and the court deemed an injustice would be done if such evidence were excluded. *Rowe v. Eggum*, 107 Mont. 378, 87 P. (2d) 189.

1938. "The statute makes it incumbent upon the court, in the exercise of its discretion, to determine in each case whether the testimony is necessary to enable the plaintiff to make out a prima facie case and thus prevent an injustice." *Rowe v. Eggum*, 107 Mont. 378, 87 P. (2d) 189.

1938. Under this section it is discretionary with the judge to admit declarations made by the deceased to a proposed witness if, in his opinion, an injustice would be done if the evidence be excluded. *Rowe v. Eggum*, 107 Mont. 378, 87 P. (2d) 189.

10536. Persons in certain relations cannot be examined.

1937. The object of this statute is not to absolutely disqualify a physician from testifying, but to enable a patient to secure medical aid without betrayal of confidence. *Heir v. Farmers Mutual Fire Ins. Co.*, 104 Mont. 471, 67 P. (2d) 831.

1937. Plaintiff administrator, by calling the deceased's physician to testify as to the insanity of the deceased, waived the privilege of the statute, without expressly waiving it, especially where only basis for recovery depended upon the existence of insanity. *Hier v. Farmers Mutual Fire Ins. Co.*, 104 Mont. 471, 67 P. (2d) 831.

1937. This section does not permit either an insurer or his physician to waive privilege of this section and testify as to the sanity of the insured, alleged to have burned the insured property, deceased at the time of a trial for fire loss. *Hier v. Farmers Mutual Fire Ins. Co.*, 104 Mont. 471, 67 P. (2d) 831.

10537. Judge or juror may be witness.

1936. In proceedings to punish for contempt for publishing a false or grossly inaccurate report of a court other articles in the same publication are admissible to corroborate evidence of intent of such publication. In *re Nelson et al.*, 103 Mont. 43, 60 P. (2d) 365, holding, also, that it was proper to allow judges of the court to testify on the question of intent, which was undisputed.

CHAPTER 158

WRITINGS—PUBLIC WRITINGS

10540. Public writings defined.

1937. Under section 4810 and other statutory and constitutional provisions, an elector may inspect petitions for a referendum in the possession of the recorder and county clerk, whether or not they be regarded as public records. *State ex rel. Halloran v. McGrath*, 104 Mont. 490, 67 P. (2d) 838.

1937. The right of inspection of public records by the public is subject to reasonable regulation, but such regulations must not be of such an arbitrary nature as to deny to the applicant the right granted him by law. *State ex rel. Halloran v. McGrath*, 104 Mont. 490, 67 P. (2d) 838.

10542. Every citizen entitled to inspect and copy public writings.

1937. The right of inspection of public records by the public is subject to reasonable regulation, but such regulations must not be of such an arbitrary nature as to deny to the applicant the right granted him by law. *State ex rel. Halloran v. McGrath*, 104 Mont. 490, 67 P. (2d) 838.

1937. Under section 4810 and other statutory and constitutional provisions, an elector may inspect petitions for a referendum in the possession of the recorder and county clerk, whether or not they be regarded as public records. *State ex rel. Halloran v. McGrath*, 104 Mont. 490, 67 P. (2d) 838.

10555. Record — how authenticated as evidence.

1935. Cited in *Kroenke v. Gold Creek Mining Co.*, 100 Mont. 571, 51 P. (2d) 640.

10558. Effect of a judgment or final order upon rights in various cases.

1939. The former suit must have involved the same matter of litigation in order that the judgment therein may be *res judicata* in a subsequent suit. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

1939. Judgment in suit to determine ownership of mill sites, which was dismissed on merits without hearing evidence, was held not *res judicata* of later suit to try title to tailings on such sites. *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

10561. What deemed adjudged in a judgment.

1938. A judgment awarding to an appropriator of water rights a part of certain miner's inches, but which failed to adjudicate as to the remainder, held not to estop the successors in interest to the remainder from having their rights adjudicated in a later action. *Missoula Light & Power Co. v. Hughes*, 106 Mont. 355, 77 P. (2d) 1041.

10568. Manner of proving other official documents.

1936. The court must take judicial notice of original certificate of the comptroller of the currency appointing a receiver for a national bank when produced in court, but a certified copy of a record thereof as filed in the office of the county clerk and recorder, or the record itself, would not make it admissible in evidence in the absence of proof of execution from the custodian of the original. *Kibble v. Morris*, 101 Mont. 308, 53 P. (2d) 1150.

CHAPTER 158A

UNIFORM OFFICIAL REPORTS AS EVIDENCE ACT

Section

- 10576.1. Official reports of state officers — as evidence.
- 10576.2. Delivery of copy of report to adverse party—necessity.
- 10576.3. Cross-examination of party making reports —privilege of adverse party—prejudice to.
- 10576.4. Construction of act.
- 10576.5. Short title.

10576.1. Official reports of state officers—as evidence. Written reports or findings of fact made by officers of this state, on a matter within the scope of their duty as defined by statute, shall, in so far as relevant, be admitted as evidence of the matters stated therein. [L. '37, Ch. 143, § 1. Approved and in effect March 16, 1937.]

10576.2. Delivery of copy of report to adverse party—necessity. Such report or finding shall be admissible only if the party offering it has delivered a copy of it or so much thereof as may relate to the controversy, to the adverse party a reasonable time before trial, unless in the opinion of the trial court the adverse party has not been unfairly surprised by the failure to deliver such copy. [L. '37, Ch. 143, § 2. Approved and in effect March 16, 1937.]

10576.3. Cross-examination of party making reports—privilege of adverse party—prejudice to. Any adverse party may cross-examine any person making such reports or findings or any person furnishing information used therein; but the fact that such testimony may not be obtainable shall not affect the admissibility

of the report or finding, unless, in the opinion of the court, the adverse party is unfairly prejudiced thereby. [L. '37, Ch. 143, § 3. Approved and in effect March 16, 1937.

10576.4. Construction of act. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [L. '37, Ch. 143, § 4. Approved and in effect March 16, 1937.

10576.5. Short title. This act may be cited as the uniform official reports as evidence act. [L. '37, Ch. 143, § 5. Approved and in effect March 16, 1937.

Section 6 repeals conflicting laws.

CHAPTER 159

WRITINGS — PRIVATE WRITINGS

10585. Original writing to be proved or accounted for.

1935. Copy of notice of cancellation of insurance policy held properly excluded where it did not contain pencil marks admittedly placed on the original after its receipt, where original was already in evidence. *McGonigle v. Prudential Ins. Co.*, 100 Mont. 203, 46 P. (2d) 687.

10597. Removal of public records.

1935. Cited in *Kroenke v. Gold Creek Mining Co.*, 100 Mont. 571, 51 P. (2d) 640.

10598. Certified copies of records as evidence.

1936. The court must take judicial notice of original certificate of the comptroller of the currency appointing a receiver for a national bank when produced in court, but a certified copy of a record thereof as filed in the office of the county clerk and recorder, or the record itself, would not make it admissible in evidence in the absence of proof of execution from the custodian of the original. *Kibble v. Morris*, 101 Mont. 308, 53 P. (2d) 1150.

1935. Cited in *Kroenke v. Gold Creek Mining Co.*, 100 Mont. 571, 51 P. (2d) 640, holding that the personal testimony of a custodian is not required for the identification of documents in his custody, hence change of venue would not be justified for the convenience of the county clerk and recorder, or bank liquidating officer, in testifying in person as to the identification of documents in their custody.

CHAPTER 159A

UNIFORM BUSINESS RECORDS AS EVIDENCE ACT

Section

- 10598.1. "Business" defined.
- 10598.2. When records admissible.
- 10598.3. Construction of act—purpose.
- 10598.4. Short title.

10598.1. "Business" defined. The term "business" shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not. [L. '37, Ch. 59, § 1. Approved and in effect February 25, 1937.

10598.2. When records admissible. A record of an act, condition or event, shall, in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission. [L. '37, Ch. 59, § 2. Approved and in effect February 25, 1937.

10598.3. Construction of act—purpose. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [L. '37, Ch. 59, § 3. Approved and in effect February 25, 1937.

10598.4. Short title. This act may be cited as the uniform business records as evidence act. [L. '37, Ch. 59, § 4. Approved and in effect February 25, 1937.

Section 5 repeals conflicting laws.

CHAPTER 161

INDIRECT EVIDENCE — INFERENCES AND PRESUMPTIONS

10602. Presumption defined.

1936. An instruction that the jury's conclusions must be based upon the facts shown by the evidence and not upon inference, or conclusions based upon inferences or conclusions, held not to invade the province of the jury. *Wibaux Realty Co. v. Northern Pac. Ry. Co.*, 101 Mont. 126, 54 P. (2d) 1175.

10603. When an inference arises.

1939. Plaintiff was crossing an intersection to board a street car when struck by defendant's automobile admittedly travelling at a speed of 18 to 20 miles per hour. Plaintiff's testimony was contradicted by defendant's witnesses some being disinterested. Held; that the testimony of one witness is sufficient to prove a fact, notwithstanding a number testified to the contrary, and that plaintiff's testimony should be submitted to the jury as judges of its weight and credibility, and that defendant's admission of a speed of 18 to 20 miles per hour while passing a street car was negligence as to speed. *Hill v. Haller*, Mont., 90 P. (2d) 977.

1936. An instruction that the jury's conclusions must be based upon the facts shown by the evidence and not upon inference, or conclusions based upon inferences or conclusions, held not to invade the province of the jury. *Wibaux Realty Co. v. Northern Pac. Ry. Co.*, 101 Mont. 126, 54 P. (2d) 1175.

1935. An inference that the driver of a truck hauling freight belonging to the defendant was the latter's servant could not be founded solely on the inference that the truck belonged to the defendant because its name was on the truck, since a presumed fact cannot be made the basis for a further presumption. *Ashley v. Safeway Stores, Inc.*, 100 Mont. 312, 47 P. (2d) 53.

10606. All other presumptions may be controverted.

1938. A notice of appropriation of water which, after stating the purpose for which it was to be used and place of intended use, and appropriators, stated that such appropriation was made "on the.....day of....., 1871," was held prima facie evidence of the date of appropriation, but had no evidential value on the question of the amount of water actually diverted and beneficially used, under the act of 1885, p. 130. *Missoula Light & Power Co. v. Hughes*, 106 Mont. 355, 77 P. (2d) 1041.

1938. Applying the rules that, when the record on appeal in an equity case does not present the evidence taken in the court below, it will be presumed that there was sufficient to sustain the findings of the court, and that every presumption is indulged in favor of the correctness of the decision of the lower court, it was held that where a decree adjudicating water rights was never appealed from and not attacked for 17 years after made and entered, and the defendant's predecessor acquiesced therein, it could not be questioned later. *Missoula Light & Power Co. v. Hughes*, 106 Mont. 355, 77 P. (2d) 1041.

1937. In action on a note, the complaint setting out the note in haec verba and endorsement showing payment of interest within the time of the statute of limitations, held sufficient to toll the statute. *Matteson v. Ackerson*, 104 Mont. 239, 66 P. (2d) 797.

1937. Because of the presumption that the law has been obeyed, in the absence of a showing that the blue sky law was not complied with in the transfer of land to a common law trust in consideration of the grantor receiving a certificate of interest in the trust, the transaction was held valid in *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, 67 P. (2d) 811.

1937. Where bank property was conveyed to a party without consideration and by that party to the president of the bank without consideration, the presumption that the transaction was fair and in the usual course of business, and other specific presumptions, subdivisions 1, 4, and 33, were overcome and the burden, in an action by the state bank examiner against the bank officials, was shifted to the defendants to prove otherwise. *Johnson v. Kaiser*, 104 Mont. 261, 65 P. (2d) 1179.

1937. The supreme court will presume that all things required by the probate laws to be done in the course of administration of an estate were done, on the question of the effect of distribution and settlement of an estate. *Gaines v. Van Demark*, 106 Mont. 1, 74 P. (2d) 454.

1936. In the absence of any showing the presumption obtains that the proceedings in a former case between the parties were regular, as the presumption is that a judicial record, though not conclusive, does still correctly determine or set forth the rights of the parties. *Cocanougher v. Montana Life Ins. Co.*, 103 Mont. 536, 64 P. (2d) 845.

1936. As receiver may be appointed for national bank for other reasons than insolvency, the appointment of a receiver was not prima facie evidence

that the bank was insolvent in an action on the guaranty of a bank president to pay depositor in case of bank's insolvency. *Kibble v. Morris*, 101 Mont. 308, 53 P. (2d) 1150.

1936. In action for injuries caused by superintendent of poor farm in handling of truck the presumption that his duties had been regularly performed in the usual course of business did not apply to him, as he was a county employee and not a public officer. *Gagnon v. Jones*, 103 Mont. 365, 62 P. (2d) 683.

1936. A petition for a writ of mandamus to compel canvassing board to correct computation of vote held sufficiently to allege facts from which presumption arose that all official steps had been taken up to delivery of returns to board. *State ex rel. Lynch v. Batani*, 103 Mont. 353, 62 P. (2d) 565.

1936. In action for injuries caused by operation of poor farm truck by superintendent evidence held to overcome presumption that he was innocent of wrong and obeyed law. *Gagnon v. Jones*, 103 Mont. 365, 62 P. (2d) 683.

1936. The so-called "common-law marriage" is recognized as valid in this state, but, to be effective there must be the mutual consent of parties able to consent and competent to enter into a ceremonial marriage, and the assumption of such relationship, by consent and agreement, as of a time certain, followed by cohabitation and repute. *Elliott v. Industrial Accident Board*, 101 Mont. 246, 53 P. (2d) 451.

1936. Where an employee entered into a common-law marriage with his divorced wife she was entitled to compensation as employee's widow, although between the divorce and the re-marriage he had cohabited with another woman. *Elliott v. Industrial Accident Board*, 101 Mont. 246, 53 P. (2d) 451.

1936. As to the capacity of the parties to marry at the designated time, the statutory presumption of marriage must be repelled by the party disputing it, and this can be done only by satisfactory evidence. *Elliott v. Industrial Accident Board*, 101 Mont. 246, 53 P. (2d) 451.

1936. Presumptions 1, 11 and 12, of this section were applied to a motion to quash an alternative writ of supervisory control where the county attorney respondent contended that the relator, against whom the county had obtained an injunction against relator's removing buildings from a lot on which the county had a tax lien, on the ground that relator was not the owner of the lot, but merely a trespasser, and hence had no right to relief under the writ, the court refusing to quash the writ where the county attorney had treated the relator as the owner in the injunction suit. *State ex rel. Tillman v. District Court*, 101 Mont. 176, 53 P. (2d) 107.

1935. Presumptions 1, 19 and 20 of section 10606 applied to alleged negligence of pledgee in regard to collateral given in pledge, and burden was on pledgor to prove such negligence in support of his counterclaim. *Rock Island Plow Co. v. Cut Bank Implement Co.*, 101 Mont. 117, 53 P. (2d) 116.

Subdivision 12.

1937. In action by a wife against a sheriff who had allegedly seized her property on an execution against her husband, where the defendant claimed that he had no knowledge of the plaintiff's ownership of the property, evidence of common reputation of such ownership was admissible to rebut sheriff's defense of want of such knowledge. *Brennan v. Mayo*, 105 Mont. 276, 72 P. (2d) 463.

Subdivision 15.

1939. Cited in *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

Subdivision 17.

1939. Cited in *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

Subdivision 23.

1939. Cited in *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

Subdivision 30.

1937. Cited in *Stevens v. Woodmen of the World*, 105 Mont. 121, 71 P. (2d) 898.

Subdivision 32.

1936. The force of the presumption of subdivision 32 varies with the facts of each particular case; as applied to the lapse of time it is always strongest in the beginning, and the inference steadily diminishes in force with the lapse of time at a rate proportionate to the quality of the permanence belonging to the fact in question, until it ceases. *Sommer v. Wigen*, 103 Mont. 327, 62 P. (2d) 333, applying rule to presumption of want of consideration for mortgage.

Subdivision 33.

1939. Cited in *Conway v. Fabian*, Mont., 89 P. (2d) 1022.

1938. Cited in an action to enjoin diversion of water from a creek. *Sherlock v. Greaves*, 106 Mont. 206, 76 P. (2d) 87.

1936. Cited in *Peasley v. Trosper*, 103 Mont. 401, 64 P. (2d) 109.

CHAPTER 163

PRODUCTION OF EVIDENCE—BY WHOM PRODUCED

10616. Evidence to be produced, by whom.

1937. Where the trial court required the defendant to proceed with his evidence on a hearing to show cause why a restraining order issued against him should be continued it was held that such ruling did not prejudicially affect the substantial rights of the defendant. *Gibbons v. Huntsinger*, 105 Mont. 562, 74 P. (2d) 443.

1937. In an application for a restraining order it was held largely discretionary with the trial judge as to which party should be required to go forward with his proof, and if, on appeal, it was shown that the judge acted arbitrarily and that such arbitrary action was prejudicial to the complaining party, such injured party was entitled to relief on appeal. *Gibbons v. Huntsinger*, 105 Mont. 562, 74 P. (2d) 443.

1937. The plaintiff in the beginning having made a prima facie case for the issuance of a restraining order the burden was then upon the defendant to overcome the case made against him, but the determination of the case as a whole depended upon whether the evidence in its entirety preponderated in favor of one or the other party. *Gibbons v. Huntsinger*, 105 Mont. 562, 74 P. (2d) 443.

1937. While the burden is always on the plaintiff to establish every allegation of fact essential to gain the relief prayed for, the burden of going

forward with the evidence shifts from one side to the other as the trial progresses. *Gibbons v. Huntsinger*, 105 Mont. 562, 74 P. (2d) 443.

1935. Presumptions 1, 19, and 20 of section 10606 applied to alleged negligence of pledgee in regard to collateral given in pledge, and burden was on pledgor to prove such negligence in support of his counterclaim. *Rock Island Plow Co. v. Cut Bank Implement Co.*, 101 Mont. 117, 53 P. (2d) 116.

CHAPTER 164

PRODUCTION OF EVIDENCE—MEANS OF PRODUCTION—SUBPOENA

10622. When a witness is not compelled to attend.

1935. Cited in *Kroenke v. Gold Creek Mining Co.*, 100 Mont. 571, 51 P. (2d) 640, holding that the personal testimony of a custodian is not required for the identification of documents in his custody, hence change of venue would not be justified for the convenience of the county clerk and recorder, or bank liquidating officer, in testifying in person as to the identification of documents in their custody.

10625. Forfeiture therefor.

1937. Where a notary public issued a subpoena duces tecum before a copy of the affidavit and notice of the taking of a deposition were served upon the party to be examined the subpoena was void, and its disobedience would not entail the penalty of section 10625, even though there had been a partial compliance therewith. *Hiber v. Morrill*, 105 Mont. 323, 72 P. (2d) 685.

CHAPTER 165

PRODUCTION OF EVIDENCE — MANNER OF PRODUCTION — BY AFFIDAVIT, DEPOSITION, AND EXAMINATION

10632. Affidavit defined.

1936. Application for writ of prohibition may be made on verified petition which contains the necessary facts to move the court. *State ex rel. Redle v. District Court*, 102 Mont. 541, 59 P. (2d) 58.

1936. Under this and similar statutory definitions, a verified petition is equivalent to, and can be used as, an affidavit in proceedings to be instituted on affidavit. *State ex rel. Redle v. District Court*, 102 Mont. 541, 59 P. (2d) 58.

CHAPTER 167

DEPOSITIONS—HOW TAKEN WITHOUT AND WITHIN THE STATE

10645. In the state—when taken.

1935. Defendant's objection to introduction in evidence of depositions in compensation case, on ground that they were taken long before a question of fact had been raised, came too late when first made on the proffert thereof and no motion to suppress had been made prior thereto, although opposing counsel

had taken part in the taking thereof. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. The compensation act contemplates the taking of depositions in the manner prescribed by law. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

1935. An appeal to the district court in compensation case is a special proceeding within the meaning of section 10645, in regard to taking depositions. *Best v. London Guarantee & Accident Co.*, 100 Mont. 332, 47 P. (2d) 656.

Subdivision 2.

1939. Proof that witness is still absent is necessary preliminary to admission of deposition in evidence. *Healy v. First National Bank of Great Falls*, Mont., 89 P. (2d) 555.

10651. Deposition for use within state—notice—physical examination to be submitted to by party.

1937. Where a notary public issued a subpoena duces tecum before a copy of the affidavit and notice of the taking of a deposition were served upon the party to be examined the subpoena was void, and its disobedience would not entail the penalty of section 10625, even though there had been a partial compliance therewith. *Hiber v. Morrill*, 105 Mont. 323, 72 P. (2d) 685.

10652. Manner of taking depositions—may be used by either party on the trial.

1939. Proof that witness is still absent is necessary preliminary to admission of deposition in evidence. *Healy v. First Nat. Bank of Great Falls*, Mont., 89 P. (2d) 555.

1939. Mere statement of counsel that to the best of his knowledge a witness whose deposition was sought to be introduced at trial was absent in another state and address unknown held insufficient preliminary proof of absence to admit deposition in evidence. *Healy v. First Nat. Bank of Great Falls*, Mont., 89 P. (2d) 555.

1939. Admission of deposition in evidence without proper proof that witness was absent held not reversible error where there was sufficient evidence to support judgment apart from deposition. *Healy v. First Nat. Bank of Great Falls*, Mont., 89 P. (2d) 555.

CHAPTER 168

GENERAL RULES OF EXAMINATION

10665. Cross-examination, as to what.

1935. Court's discretion as to latitude of cross-examination will not be reviewed on appeal where no manifest abuse is shown. *McGonigle v. Prudential Ins. Co.*, 100 Mont. 203, 46 P. (2d) 687.

1935. Cross-examination may extend not only to facts stated by the witness in his original examination, but to all other facts connected with them which tend to enlighten the jury upon the questions in controversy. *McGonigle v. Prudential Ins. Co.*, 100 Mont. 203, 46 P. (2d) 687.

10668. How impeached.

1936. While proof of falsity in one part of a witness' testimony, inconsistent statements at other times, contradictory evidence, and reputation may

discredit the witness, such proof goes only to the credibility of the witness, of which the jury remains the sole judge, as well as the weight to be given thereto. *State v. Peterson*, 102 Mont. 495, 59 P. (2d) 61.

1936. Though the witness explained the nature of the offense of which he had been convicted and testified to facts which might tend to excuse his dereliction, nevertheless, as the statute contains no exceptions, the fact of conviction was sufficient for the court to disbelieve his testimony. *Osnos Livestock Co. v. Warren*, 103 Mont. 284, 62 P. (2d) 206.

1936. Evidence of prosecutrix thirteen years of age held sufficient to convict defendant of rape. *State v. Peterson*, 102 Mont. 495, 59 P. (2d) 61.

10669. Same—by evidence of declarations.

1936. While proof of falsity in one part of a witness' testimony, inconsistent statements at other times, contradictory evidence, and reputation may discredit the witness, such proof goes only to the credibility of the witness, of which the jury remains the sole judge, as well as the weight to be given thereto. *State v. Peterson*, 102 Mont. 495, 59 P. (2d) 61.

1936. Evidence of prosecutrix thirteen years of age held sufficient to convict defendant of rape. *State v. Peterson*, 102 Mont. 495, 59 P. (2d) 61.

CHAPTER 169

EFFECT OF EVIDENCE

10672. Jury judges of effect of evidence, but to be instructed on certain points.

1939. Plaintiff was crossing an intersection to board a street car when stuck by defendant's automobile admittedly travelling at a speed of 18 to 20 miles per hour. Plaintiff's testimony was contradicted by defendant's witnesses some being disinterested. Held; that the testimony of one witness is sufficient to prove a fact, notwithstanding a number testified to the contrary, and that plaintiff's testimony should be submitted to the jury as judges of its weight and credibility, and that defendant's admission of a speed of 18 to 20 miles per hour while passing a street car was negligence as to speed. *Hill v. Haller*, Mont., 90 P. (2d) 977.

1938. The jurors are the sole judges of the credibility of the witnesses in a criminal case, and their power to pass thereon must not be exercised arbitrarily, but in subordination to the rules of evidence. *State v. Espelin*, 106 Mont. 231, 76 P. (2d) 629.

1937. "If the plaintiff had testified falsely in one particular, that would be no ground, standing alone, for denying recovery. It would simply warrant the jury in distrusting his testimony in other respects." *McCulloch v. Horton*, 105 Mont. 531, 74 P. (2d) 1.

1936. In action for injuries caused by superintendent of poor farm in handling of truck the presumption that his duties had been regularly performed in the usual course of business did not apply to him, as he was a county employee and not a public officer. *Gagnon v. Jones*, 103 Mont. 365, 62 P. (2d) 683.

1936. Maintenance of a cigar store where card games were played for money held a nuisance and it was abated by injunction ordering the removal of all fixtures, etc., used in conducting such

nuisance, from the premises, that the fixtures be sold and proceeds used as provided by section 11130, that the premises be closed for one year, and that the operator, his servants, etc., be perpetually enjoined from conducting such nuisance. State ex rel. Nagle v. Naughton, 103 Mont. 306, 63 P. (2d) 123. See, also, State ex rel. Nagle v. Antinoli, 103 Mont. 321, 63 P. (2d) 129.

1936. While proof of falsity in one part of a witness' testimony, inconsistent statements at other times, contradictory evidence, and reputation may discredit the witness, such proof goes only to the credibility of the witness, of which the jury remains the sole judge, as well as the weight to be given thereto. State v. Peterson, 102 Mont. 495, 59 P. (2d) 61.

1936. Although the jury may reject the false testimony and assume regarding the rest of it, an attitude of distrust, the jurors may render a verdict based upon the testimony of such witness if, after examination, they find it worthy of belief. State v. Peterson, 102 Mont. 495, 59 P. (2d) 61.

1935. The provision of section 10672(3) applies to both civil and criminal cases. State v. Hogan, 100 Mont. 434, 49 P. (2d) 446.

1935. Instruction that the entire testimony of a witness who had testified falsely could be disregarded by the jury held reversible error although he had been convicted of felonies. State v. Hogan, 100 Mont. 434, 49 P. (2d) 446.

Subdivision 7.

1938. Cited in Cook-Reynolds Co. v. Beyer, 107 Mont. 1, 79 P. (2d) 658, denying reformation of a written instrument where the testimony of the persons who drew and signed the instrument was not introduced.

CHAPTER 171

EVIDENCE IN PARTICULAR CASES

10684. Compromise offer of no avail.

1936. Statement by alleged debtor that he could not pay, but that he had coal leases, held inadmissible as being an offer of compromise. Kibble v. Morris, 101 Mont. 308, 53 P. (2d) 1150.

1935. Rule of section applied where the question asked pertained to a settlement of an action which the witness had brought against two of the defendants, although he had been cross-examined by

defendants as to statements he had made in his deposition in the former case, merely to impeach him. Ashley v. Safeway Stores, Inc., 100 Mont. 312, 47 P. (2d) 53.

CHAPTER 172

PROCEEDINGS TO PERPETUATE TESTIMONY

10687. Manner of application for order.

1936. Service of notice to perpetuate testimony may be made on resident manager or agent of a foreign association doing business in Montana, for the use of such testimony in an action against the association in this state. State ex rel. Cook v. District Court, 102 Mont. 424, 58 P. (2d) 273.

1936. On notice, testimony of a nonresident may be perpetuated to be used in an action within the jurisdiction of a court in this state. State ex rel. Cook v. District Court, 102 Mont. 424, 58 P. (2d) 273.

CHAPTER 174

DECISION OF QUESTIONS OF FACT AND OF LAW—MONEYS PAID INTO COURT

10698. Questions of fact to be decided by the jury, and the evidence addressed to them.

1938. The jurors are the sole judges of the credibility of the witnesses in a criminal case, and their power to pass thereon must not be exercised arbitrarily, but in subordination to the rules of evidence. State v. Espelin, 106 Mont. 231, 76 P. (2d) 629.

CHAPTER 175

DEFINITIONS AND GENERAL PROVISIONS

10703. Common law, applicability of.

1939. Cited and applied. Smith Engineering Co. v. Rice, 102 Fed. (2d) 492.

Penal Code

CHAPTER 1

DEFINITIONS AND PRELIMINARY PROVISIONS

10710. Construction of the penal code.

1938. Cited in *State v. Aldahl*, 106 Mont. 390, 78 P. (2d) 935.

10713. Certain terms defined in the senses in which they are used in this code.

1938. "The material acts or facts constituting the legislative definition of bribery are the giving to a public officer something of value, or advantage, present, or prospective, or giving any promise or entering into any undertaking to give something of value or advantage." *State ex rel. State Highway Commission of Montana v. District Court*, 107 Mont. 126, 81 P. (2d) 347, holding complaint insufficient.

1937. Cited in *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P. (2d) 337.

1936. Memorandum of costs must be filed and served within five days from date of notice of decision on application for writ of supervisory control in supreme court rather than within that time from issuance of writ, and motion to strike memorandum not so filed and served was granted in *State ex rel. Clark v. District Court*, 103 Mont. 145, 61 P. (2d) 836.

1935. Letters sent to policy holders by an insurance company stating that the plaintiff insurance agent was no longer writing policies for the company as it agent, were prima facie privileged, and could be held libelous only on proof that they were sent maliciously. *Miller Ins. Agency v. Home Fire & Marine Ins. Co. of California*, 100 Mont. 551, 51 P. (2d) 628.

1935. In a libel action the question of malice or no malice is for the jury, but the question whether there is any evidence of malice to go to the jury is for the court. *Miller Ins. Agency v. Home Fire & Marine Ins. Co. of California*, 100 Mont. 551, 51 P. (2d) 628.

Subdivision 4.

1939. Generally the question of malice or no malice is for the jury. *Vaughn v. Mesch*, 107 Mont. 498, 87 P. (2d) 177.

1939. In an assault case the use of a dangerous weapon is itself some evidence of a wanton disregard of human life and generally gives rise to the right of punitive damages. *Vaughn v. Mesch*, 107 Mont. 498, 87 P. (2d) 177.

1939. The test of malice in an assault case is not the quantum of force but whether the assailant was in a malicious state of mind, so far as the awarding of exemplary damages is concerned. *Vaughn v. Mesch*, 107 Mont. 498, 87 P. (2d) 177.

10723. Felony and misdemeanor defined.

1938. Cited in *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

10725. Punishment of misdemeanor, when not otherwise prescribed.

1938. This section controls the punishment for violation of section 2812. *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

1938. This section is applicable to acts made misdemeanors after its passage. *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

1937. An osteopath who prescribes or uses drugs in the practice of osteopathy, or who performs major or operative surgery, is practicing contrary to the provisions of the act regulating the practice of osteopathy within the meaning of section 3132, and since that section prescribes a penalty for all violations of the statutes regulating the practice of osteopathy, of which section 3130 is a part, section 10725 has no application to a prosecution under section 3130. *State ex rel. Freebourn v. District Court*, 105 Mont. 77, 69 P. (2d) 748.

1935. The district court has jurisdiction of all public offenses not otherwise provided for, and, therefore, has jurisdiction of misdemeanors only in exceptional cases, and, unless a law specifically provides that the court shall have jurisdiction in cases of its violation or fixes the penalty above the maximum jurisdiction of the justices' courts, cases of violation fall within the exclusive jurisdiction of the latter courts. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

10727. Intent, how manifested, and who considered of sound mind.

1935. Evidence held sufficient to show felonious intent in prosecution for theft of mare. *State v. Simanton*, 100 Mont. 292, 49 P. (2d) 981.

10728. Drunkenness no excuse for crime—when it may be considered—how insanity must be proven.

1937. Intoxication cannot be used to shield one from answering for a criminal offense any further than it may be shown in mitigation, and that such intoxication had reached the stage where the accused was incapable of forming a malicious intent. *State v. Laughlin*, 105 Mont. 490, 73 P. (2d) 718.

1937. In prosecution for an attempt to commit rape evidence as the defendant's mental capacity, as against defense of intoxication, held to sustain conviction. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. In prosecution for attempt to commit rape an instruction in the terms of section 10728 was held proper. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

CHAPTER 2

PERSONS LIABLE TO PUNISHMENT — PARTIES TO CRIME

10733. Who are accessories.

1938. An information which charged the defendant with being an accessory to the commission of a felony, namely a violation of section 1812, which is a misdemeanor, the information was defective. *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314.

1936. Corrupt practices act is not violative of constitution. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

1936. The corrupt practices act does not violate the constitution, Art. 3, § 10, since the constitution was not intended to extend immunity for every use or abuse of language. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

1936. If a candidate has been guilty of corrupt practices in running for office his election is void and he holds no office and never did. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

CHAPTER 6

OFFENSES BY AND AGAINST CANDIDATES FOR NOMINATION AND ELECTION CONTESTS (CORRUPT PRACTICES ACT)

10796. Corrupt practice, what constitutes.

1936. A candidate for office of chief justice of supreme court stating in good faith to voters that he believed section 378 unconstitutional and that, if elected to the office, would not accept compensation for reporting cases, did not violate corrupt practices act. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

1936. Offers made and statements published by candidates for a public office that they will, if elected, serve at less salaries or for less fees than those fixed by law, are in violation of the corrupt practices act and constitute bribery under the common law. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662, holding petition in election contest stated a cause of action.

10800. Political criminal libel.

1936. The corrupt practices act does not violate the constitution, Art. 3, § 10, since the constitution was not intended to extend immunity for every use or abuse of language. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

10803. Forfeiture of nomination or office for violation of law, when not worked.

1936. Although in its original and popular sense the term "good faith" denotes honesty of purpose, absence of bad faith, yet it is popularly used to denote the actual existing state of the mind, without regard to what it should be from given standards of law and reason. It does not always require sound judgment and business sagacity. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

1936. A candidate for office of chief justice of supreme court stating in good faith to voters that he believed section 378 unconstitutional and that, if

elected to the office, would not accept compensation for reporting cases, did not violate corrupt practices act. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

10804. Punishment for violation of act.

1936. If a candidate has been guilty of corrupt practices in running for office his election is void and he holds no office and never did. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

1936. Section 17 of Art. 5 of the constitution has to do with violations of law while in office and has nothing to do with election contests, since if the candidate has been guilty of corrupt practices in running for office his election is void and he holds no office. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

1936. Corrupt practices act is not violative of constitution. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

1936. A candidate for office of chief justice of supreme court stating in good faith to voters that he believed section 378 unconstitutional and that, if elected to the office, would not accept compensation for reporting cases, did not violate corrupt practices act. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

10805. Time for commencing contest.

1936. A petition for a recount was improperly dismissed for the reason that an unsuccessful candidate petitioner was disqualified for the office of sheriff because of conviction of felony in the federal court, since neither the district nor the supreme court on appeal could decide such question in a recount proceeding under recount statutes. *State ex rel. Stone v. District Court*, 103 Mont. 515, 63 P. (2d) 147.

1936. If the contents of the ballot box are in such condition or such irregularities appear, as to render impossible a correct count, due to fraud, then the returns of the election officers must be accepted, for the recomputation is not a substitute for a contest in which the legality of the votes actually cast may be passed upon. *State ex rel. Stone v. District Court*, 103 Mont. 515, 63 P. (2d) 147.

1936. Eligibility of a candidate to an office is to be decided under statutes providing therefor and this issue has no place in a recount proceeding. The two procedures are different and distinct, and each serves its own purpose. In a recount proceeding even honest errors of law on the part of the election officers are not subject to review, but the record alone can be examined on certiorari to determine if a mistake in tabulation has been made. *State ex rel. Stone v. District Court*, 103 Mont. 515, 63 P. (2d) 147.

10806. Court having jurisdiction of proceedings.

1936. Election contest is an action at law, and supreme court will not disturb findings when supported by substantial evidence. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

10810. Grounds for contest of nomination or office.

1936. Offers made and statements published by candidates for a public office that they will, if elected, serve at less salaries or for less fees than those fixed by law, are in violation of the corrupt practices act and constitute bribery under the common law. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662, holding petition in election contest stated a cause of action.

10813. Contents of contest petition—amendment—bond—costs—citation—procedure.

1936. Offers made and statements published by candidates for a public office that they will, if elected, serve at less salaries or for less fees than those fixed by law, are in violation of the corrupt practices act and constitute bribery under the common law. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662, holding petition in election contest stated a cause of action.

10814. Hearing of contest.

1936. Election contest is an action at law, and supreme court will not disturb findings when supported by substantial evidence. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662.

CHAPTER 7

OFFENSES BY PUBLIC OFFICERS

10824. Asking or receiving bribes.

1938. Complaint against highway commissioners held insufficient in not stating facts showing offense, but only conclusions. *State ex rel. State Highway Commission of Montana v. District Court*, 107 Mont. 126, 81 P. (2d) 347.

CHAPTER 10

RESCUES AND ESCAPES

10866. Escapes from state prison—punishment.

1936. Where a prisoner escaped from a Montana jail and was apprehended in California on a warrant of rendition charging the crime as "escape, a felony," a release on habeas corpus by the superior court was held not final, but appealable by the state; and the writ was discharged on appeal to the supreme court, although there had been no conviction of the crime of escape in Montana. *Ex parte Murdock*, 5 Cal. (2d) 644, 55 P. (2d) 843.

CHAPTER 14A

UNFAIR PRACTICES ACT

Section		Section	
10915.1.	Unfair practices act—price discriminations to destroy competition—commodities or services—definitions—discrimination—sectional and local—allowances for different grades and costs of transportation—rebates—sales at less than contract price—liability.	10915.6.	Closing-out sales—perishable or damaged goods—sale by officer—meeting legal price of competitor—vendor defined.
10915.2.	Persons responsible—unlawful intent.	10915.7.	Rebates—refunds—discounts—when unfair—penalty—cooperative associations.
10915.3.	Sales at less than cost—violations—"cost" defined—"cost of doing business" defined.	10915.8.	Attorney general—when to act—nature of proceeding—injunction.
10915.4.	Purchases at forced or close-out sales—as basis for determining cost price.	10915.9.	Contracts—when illegal.
10915.5.	Intent—allegation and proof—cost survey—injunction.	10915.10.	Violations—who may enjoin—damages—defendant as witness—records—immunity.
10915.5a.	Agricultural products—fair price—establishment—procedure—underselling—violation of act.	10915.11.	Violations of act—penalties.
		10915.12.	Administration of act—duty of Montana trade commission—complaint—notice of hearing—intervention—findings—order to desist—review in district court—additional evidence—appeal to supreme court—service of commission's processes—finality of commission's order—violation of act—penalty—remedies concurrent and cumulative.
		10915.12a.	Cost survey—procedure for establishment—determination of facts—duty of commission—findings—presumptions.
		10915.12b.	Montana trade commission—hearings and investigations—powers—attendance of witnesses—disobedience of subpoena—possible incrimination no excuse.
		10915.12c.	Invoices—substitution or falsification—penalty.
		10915.13.	Partial invalidity saving clause.
		10915.14.	Purpose and construction of act.
		10915.15.	Short title of act.
		10915.16.	Emergency clause—necessity of act.
		10915.1.	Unfair practices act—price discriminations to destroy competition—commodities or services—definitions—discrimination—sectional and local—allowances for different grades and costs of transportation—rebates—sales at less than contract price—liability. It shall be unlawful for any person, firm, or corporation, doing business in the state of Montana and engaged in the production, manufacture, distribution or sale of any commodity, or product, or service or output of a service trade, of general use or consumption, or the product or service of any public utility, with the intent to destroy the competition of any regular established dealer in such commodity, product or service, or to prevent the competition of any person, firm, private corporation, or municipal or other public corporation, who or which in good faith, intends and attempts to become such dealer, to discriminate between different sections, communities or cities or portions thereof, or between different locations in such sections, communities, cities or portions thereof in this state, by selling or furnishing such commodity, product or service at a lower rate in one section, community or city, or any portion thereof, or in one location in such section, community, or city or any portion thereof, than in another after making allowance for difference, if any, in the grade or quality, quantity and in the actual cost of

transportation from the point of production, if a raw product or commodity, or from the point of manufacture, if a manufactured product or commodity. This act shall not be construed to prohibit the meeting in good faith of a competitive rate, or to prevent a reasonable classification of service by public utilities for the purpose of establishing rates. The inhibition hereof against locality discrimination shall embrace any scheme of special rebates, collateral contracts or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this act.

Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant [pursuant] to the provision of section 1 [10915.1] of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby. [L. '37, Ch. 80, § 1. Approved and in effect March 3, 1937.

1939. Under this chapter it is only unlawful to sell below the minimum when done for the purpose of injuring or destroying competition. *Associated Merchants of Montana v. Ormesher*, 107 Mont. 530, 86 P. (2d) 1031.

1939. "A price-fixing statute may be valid if justification for it is found in a desire upon the part of the legislature to curb an evil affecting the public interest so as to fall within the police power of the state. The purpose of protecting the general public against monopolies is within the police power of the state." *Associated Merchants of Montana v. Ormesher*, 107 Mont. 530, 86 P. (2d) 1031.

1939. This chapter is valid. *Associated Merchants of Montana v. Ormesher*, 107 Mont. 530, 86 P. (2d) 1031.

1939. This act does not conflict with the federal or state constitution, as a denial of due process of law. *Associated Merchants of Montana v. Ormesher*, 107 Mont. 530, 86 P. (2d) 1031.

1939. "We cannot say that the means employed by the statute are not adapted to accomplish the purpose of the act. The legislative determination on the point is conclusive upon the courts in the absence of a palpable abuse of power." *Associated Merchants of Montana v. Ormesher*, 107 Mont. 530, 86 P. (2d) 1031.

1939. "This statute is not a price-fixing statute. Its aim and object is to prevent unfair competition in business." *Associated Merchants of Montana v. Ormesher*, 107 Mont. 530, 86 P. (2d) 1031.

10915.2. Persons responsible — unlawful intent. Any person who, either as director, officer or agent of any firm or corporation or as agent of any person, violating the provisions of this act, assists or aids, directly or indirectly in such violation shall be responsible therefor equally with the person, firm or corporation for whom or which he acts.

In the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm, or corporation for whom or which he acts. [L. '37, Ch. 80, § 2. Approved and in effect March 3, 1937.

10915.3. Sales at less than cost—violations—"cost" defined—"cost of doing business" defined. It shall be unlawful for any person, partnership, firm, corporation, joint stock company, or other association engaged in business within this state, to sell, offer for sale or advertise for sale any article or product, or service or output of a service trade, at less than the cost thereof to such vendor, or give, offer to give or advertise the intent to give away any article or product, or service or output of a service trade for the purpose of injuring competitors and destroying competition, and he or it shall also be guilty of a misdemeanor, and on conviction thereof shall be subject to the penalties set out in section 11 [10915.11] of this act for any such act.

The term "cost" as applied to production is hereby defined as including the cost of raw materials, labor and all overhead expenses of the producer; and as applied to distribution "cost" shall mean the invoice or replacement cost, whichever is lower, of the article or product to the distributor and vendor plus the cost of doing business by said distributor and vendor.

The "cost of doing business" or "overhead expense" is defined as all costs of doing business incurred in the conduct of such business and must include, without limitation the following items of expense: labor (including salaries of executives and officers), rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery costs, credit losses, all types of licenses, taxes, insurance and advertising. [L. '37, Ch. 80, § 3. Approved and in effect March 3, 1937.

1939. This statute fixes the minimum price only, leaving in the seller the discretion to sell at whatever price above that he chooses. The minimum price is fixed not as an end in itself, but to prevent ruinous price-cutting injuring or destroying competition. *Associated Merchants of Montana v. Ormesher*, 107 Mont. 530, 86 P. (2d) 1031.

1939. This section is not invalid as indefinite and uncertain on the ground that the cost of an article, including the cost of doing business, cannot be ascertained under the terms of the statute. *Associated Merchants of Montana v. Ormesher*, 107 Mont. 530, 86 P. (2d) 1031.

10915.4. Purchases at forced or close-out sales — as basis for determining cost price. In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of said article or product purchased at a forced, bankrupt, closeout sale, or

other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of said sale of said article or product replaced through the ordinary channels of trade, unless said article or product is kept separate from goods purchased in the ordinary channels of trade and unless said article or product is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale. [L. '37, Ch. 80, § 4. Approved and in effect March 3, 1937.]

10915.5. Intent—allegation and proof—cost survey—injunction. In any injunction proceeding or in the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts. Where a particular trade or industry, of which the person, firm or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, the said cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm or corporation complained against within the provisions of this act. [L. '37, Ch. 80, § 5. Approved and in effect March 3, 1937.]

1939. This section is not objectionable because it provides that a cost survey made by the trade or industry in which a person is engaged, for the locality in which he does business, is admissible in evidence against the defendant in an injunction suit for violation of the act, as it does not purport to prescribe the weight or credibility to be given to it. Associated Merchants of Montana v. Ormesher, 107 Mont. 530, 86 P. (2d) 1031.

10915.5a. Agricultural products—fair price—establishment—procedure—underselling—violation of act. The following method shall be used in determining fair prices for agricultural products sold on local markets, in any trade area, district or city in which the major portion of any agricultural commodity or product is produced within or adjacent to said trade area, city or district.

Whenever 75% of producers of any agricultural product or commodity marketing said products or commodities within any trade area, district or city shall determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be deemed the fair price for such product or commodity under the terms of this act.

Such producers through their regular constituted agents shall file with the Montana

trade commission such fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers and consumers of said agricultural products or commodities. Any organization representing consumers shall not be denied representation at such a meeting.

After the establishment of such a schedule of fair prices for said agricultural products or commodities, it shall be a violation of this act for any producer, jobber, wholesaler or retailer to sell or buy any agricultural commodity or product below such price as established by the Montana trade commission and such action shall be deemed a violation of this act and punishable under the terms provided in this act. [L. '37, Ch. 80, § 5a. Approved and in effect March 3, 1937.]

10915.6. Closing-out sales—perishable or damaged goods—sale by officer—meeting legal price of competitor—vendor defined. The provisions of sections 3, 4, and 5 [10915.3, 4, 5] shall not apply to any sale made:

(a) In closing out in good faith, the owner's stock or any part thereof, for the purpose of discontinuing his trade in any such stock or commodity, and in the case of the sale of seasonal goods or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(c) By an officer acting under the orders of any court;

(d) In an endeavor made in good faith to meet the legal prices of a competitor as herein defined selling the same article or product, or service or output of a service trade, in the same locality or trade area.

Any person, firm or corporation who performs work upon, renovates, alters or improves any personal property belonging to another person, firm or corporation, shall be construed to be a vendor within the meaning of this act. [L. '37, Ch. 80, § 6. Approved and in effect March 3, 1937.]

10915.7. Rebates—refunds—discounts—when unfair—penalty—cooperative associations. The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is an unfair trade practice and any person, firm, partner-

ship, corporation, or association resorting to such trade practice shall be deemed guilty of a misdemeanor and on conviction thereof shall be subject to the penalties set out in section 11 [10915.11] of this act.

Provided, however, that nothing in this act shall prevent a cooperative association, organized and operating on a true cooperative basis, from returning to the members, producers or consumers the whole or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to or through the association. [L. '37, Ch. 80, § 7. Approved and in effect March 3, 1937.]

1939. This section cited in *Associated Merchants of Montana v. Ormesher*, 107 Mont. 530, 86 P. (2d) 1031.

10915.8. Attorney general—when to act—nature of proceeding—injunction. Upon the third violation of any of the provisions of sections 1 to 7 [10915.1-10915.7], inclusive, of this act by any corporation, it shall be the duty of the attorney general to institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges and powers exercised by such corporation, and to permanently enjoin it from transacting business in this state. If in such action the court shall find that such corporation is violating or has violated any of the provisions of sections 1 to 7 [10915.1-10915.7], inclusive, of this act, it must enjoin said corporation from doing business in this state permanently or for such time as the court shall order, or must annul the charter, or revoke the franchise of such corporation. [L. '37, Ch. 80, § 8. Approved and in effect March 3, 1937.]

10915.9. Contracts—when illegal. Any contract, express or implied, made by any person, firm or corporation in violation of any of the provisions of sections 1 to 7 [10915.1-10915.7], inclusive, of this act, is declared to be an illegal contract and no recovery thereon shall be had. [L. '37, Ch. 80, § 9. Approved and in effect March 3, 1937.]

10915.10. Violations—who may enjoin—damages—defendant as witness—records—immunity. Any person, firm, private corporation or municipal or other public corporation, or trade association, may maintain an action to enjoin a continuance of any act or acts in violation of sections 1 to 7 [10915.1-10915.7], inclusive, of this act and, if injured thereby, for the recovery of damages. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of sections 1 to 7 [10915.1-10915.7], inclusive, of this act, it shall enjoin the

defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant three times the amount of the actual damages, if any, sustained.

Any defendant in an action brought under the provisions of this section may be required to testify under the provisions of the code of civil procedure of this state, in addition the books and records of any such defendant may be brought into court and introduced, by reference, into evidence; provided, however, that no information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under the provisions of sections 1 to 7 [10915.1-10915.7], inclusive, and 11 [10915.11] of this act. [L. '37, Ch. 80, § 10. Approved and in effect March 3, 1937.]

10915.11. Violations of act—penalties. Any person, firm or corporation, whether as principal, agent, officer or director, for himself, or itself, or for another person, or for any firm or corporation, or any corporation, who or which shall violate any of the provisions of sections 1 to 7 [10915.1-10915.7], inclusive, of this act, is guilty of a misdemeanor for each single violation and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000.00), or by imprisonment not exceeding six months or by both said fine and imprisonment in the discretion of the court. [L. '37, Ch. 80, § 11. Approved and in effect March 3, 1937.]

10915.12. Administration of act—duty of Montana trade commission—complaint—notice of hearing—intervention—findings—order to desist—review in district court—additional evidence—appeal to supreme court—service of commission's processes—finality of commission's order—violation of act—penalty—remedies concurrent and cumulative. The Montana trade commission shall have the administration of this act; and the members thereof shall not receive any additional compensation for their services other than their salaries prescribed by law.

Said commission is empowered and directed to prevent any person, firm or corporation from violating any of the provisions of this chapter.

Whenever the commission shall have reason to believe that any such person, firm or corporation has been or is engaging in any course of conduct or doing any act or acts in violation of the provisions of this chapter and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest

of the public, it shall issue and serve upon such person, firm or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed not less than five days after the service of said complaint. Any such complaint may be amended by the commission in its discretion at any time five days prior to the issuance of an order based thereon. The person, firm or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, firm or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, firm or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the act or conduct in question is prohibited by this chapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, firm or corporation an order requiring such person, firm or corporation to cease and desist from such acts or conduct. Until a transcript of the record in such hearing shall have been filed in a district court, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

Any person, firm or corporation required by an order of the commission to cease and desist from any such act or conduct may obtain a review of such order in any district court of the state of Montana within any district where the act or conduct in question was done or carried on, or where such person, firm or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court of transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commission. Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such tran-

script a decree affirming, modifying, or setting aside the order of the commission, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pendente lite*. The findings of the commission as to the facts, if supported by sufficient evidence, shall be conclusive. To the extent that the order of the commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by sufficient evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the supreme court upon appeal as in other cases of judgments of such courts; provided, however, that said appeal shall be taken within thirty days from the date of the entry of such judgment or decree.

Such proceedings in the district court shall be given precedence over other civil cases pending therein, and shall be in every way expedited. Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same,

and the return post office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

An order of the commission to cease and desist shall become final (1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; (2) upon the expiration of the time allowed for filing a notice of appeal to the supreme court, if the order of the commission has been affirmed, or the petition for review dismissed by the district court and no notice of appeal to the supreme court has been duly filed, or (3) upon the expiration of thirty days from the date of issuance of the remittitur of the supreme court, if such court directs that the order of the commission be affirmed or the petition for review dismissed.

If the supreme court directs that the order of the commission be modified or set aside, the order of the commission rendered in accordance with the mandate of the supreme court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission shall become final when so corrected.

If the order of the commission is modified or set aside by the district court and if (1) the time allowed for filing a notice of appeal to the supreme court has expired and no such notice of appeal has been duly filed or (2) the decision of the district court has been affirmed by the supreme court, then the order of the commission rendered in accordance with the mandate of the district court shall become final on the expiration of thirty days from the time such order of the commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission shall become final when so corrected.

If the supreme court orders a rehearing; or if the case is remanded by the district court to the commission for a rehearing, and if (1) the time for filing a notice of appeal to the supreme court has expired and no such notice of appeal has been duly filed, or (2) the decision of the court has been affirmed by the supreme court, then the order of the commission rendered upon such rehearing shall become final in the same manner as though no prior order of the commission had been rendered.

Any person, firm or corporation who violates an order of the commission to cease and desist after it has become final, and while such order

is in effect shall forfeit and pay to the state of Montana a penalty of not more than one thousand dollars (\$1,000.00) for each violation, which shall accrue to the state of Montana and may be recovered in a civil action brought by the state of Montana.

The remedies and method of enforcement of this chapter provided for in this section shall be deemed concurrent and in addition to the other remedies provided in this chapter. [L. '39, Ch. 50, § 1, amending L. '37, Ch. 80, § 12. Approved February 22, 1939.]

10915.12a. Cost survey — procedure for establishment—determination of facts—duty of commission — findings — presumptions. The Montana trade commission is hereby empowered and directed whenever application therefor shall have been made by ten or more persons, firms or corporations within any particular retail trade or business to establish the cost survey provided for in section 5 [10915.5] of this chapter. When petition for such cost survey has been so presented to the commission, the commission shall, as soon as possible, fix a time for a public hearing upon the question of whether such cost survey should be established. Such hearing shall be held at the office of said commission and upon such notice as the commission may by rule require; provided, however, that notice of such hearing shall be published for at least two successive weeks in such daily newspaper or newspapers as the commission may designate as most commonly circulated in the counties to be affected by such cost survey. Said notice shall further state the locality or area in respect to which said cost survey is proposed to be established and the particular retail trade or business to be affected thereby.

At the time fixed in said notice any person, firm or corporation shall be entitled to appear and be heard by the commission upon all questions to be determined by it as provided in this section. If the commission shall determine that a cost survey shall be established, it shall at the same hearing proceed to classify and define the particular retail trade or business, or parts thereof, to be affected thereby, determine and delimit the particular area within which such retail trade or business shall be so affected, and find and determine the probable "cost of doing business" or "overhead expense", stated in percentage or percentages of invoice or replacement cost which would probably be incurred by the most efficient person, firm or corporation within such retail trade or business within such area.

The percentage or percentages so fixed and determined shall be presumed to be the actual "cost of doing business" and "overhead ex-

pense" of any person, firm or corporation in such retail trade or business and within the area, affected by such cost survey. [L. '39, Ch. 50, § 2, adding new section to L. '37, Ch. 80. Approved February 22, 1939.]

10915.12b. Montana trade commission — hearings and investigations — powers—attendance of witnesses—disobedience of subpoena—possible incrimination no excuse. The Montana trade commission for the purpose of conducting hearings and investigations which, in the opinion of the commission, are necessary and proper for the exercise of the powers vested in it by this chapter shall have the following powers:

The commission, or its duly authorized agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the commission shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the commission, or before its duly authorized agent conducting the investigation. Any member of the commission or any agent, duly authorized by the commission for such purposes, may administer oaths and affirmations, examine witnesses and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place within the state of Montana at any designated place of hearing.

In any case of contumacy or refusal to obey a subpoena issued to any person, any district court of the state of Montana, with any district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission shall have jurisdiction to issue to such person, an order requiring such person to appear before the commission, or its duly authorized agent, and there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the commission, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture

for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [L. '39, Ch. 50, § 3, adding new section to L. '37, Ch. 80. Approved February 22, 1939.]

10915.12c. Invoices — substitution or falsification—penalty. It shall be unlawful for any person, partnership, firm, corporation, joint stock company or other association, as defined in section 3 [10915.3], to change, alter, substitute or falsify any invoice where such practice tends to injure a competitor or to destroy competition or to mislead any court or commission. Said practice is unfair trade practice and any person, firm, partnership, corporation or association resorting to such trade practice shall be guilty of a misdemeanor and, on conviction, shall be subject to the penalties provided in section 11 [10915.11] of this act. [L. '39, Ch. 50, § 4, adding new section to L. '37, Ch. 80. Approved February 22, 1939.]

10915.13. Partial invalidity saving clause. If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. The legislature hereby declares that it would have passed this act, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases be declared unconstitutional. [L. '37, Ch. 80, § 13. Approved and in effect March 3, 1937.]

10915.14. Purpose and construction of act. The legislature declares that the purpose of this act is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This act shall be literally [liberally] construed that its beneficial purposes may be subserved. [L. '37, Ch. 80, § 14. Approved and in effect March 3, 1937.]

10915.15. Short title of act. This act shall be known and designated as the "unfair practices act". [L. '37, Ch. 80, § 15. Approved and in effect March 3, 1937.]

1939. This section cited in *Associated Merchants of Montana v. Ormesher*, 107 Mont. 530, 86 P. (2d) 1031.

10915.16. Emergency clause — necessity of act. This act is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and safety, and shall therefore go into immediate effect. The facts constituting the necessity are as follows:

The sale at less than cost of goods obtained at forced, bankrupted, close out, and other sales outside of the ordinary channels or trade is destroying healthy competition. If such practices are not immediately stopped, many more businesses will be forced into bankruptcy. In order to prevent such occurrences, it is necessary that this act go into effect immediately. [L. '37, Ch. 80, § 16. Approved and in effect March 3, 1937.]

CHAPTER 14B

FINANCING AGREEMENTS IN SALE OF MOTOR VEHICLES

Section

- 10915.20. Financing agreements in sale of motor vehicles — policy of law — restraint of competition.
- 10915.21. Definitions.
- 10915.22. Financing agreements — when prohibited and void.
- 10915.23. Threats as evidence.
- 10915.24. Penalty.
- 10915.25. Suit for injury to business or property — damages.

10915.20. Financing agreements in sale of motor vehicles — policy of law — restraint of competition. It is hereby declared to be the policy of this state that free and unrestrained competition shall prevail in the business of financing the purchase or sale of motor vehicles. [L. '37, Ch. 144, § 1. Approved March 16, 1937.]

10915.21. Definitions. (a) The term “person” as used in this act means any individual, firm, corporation, partnership, association, trustee, receiver, or assignee for the benefit of creditors.

(b) The term “sell”, “sold”, “buy”, and “purchase” as used in this act, include exchange, barter, gift, and offer or contract to sell or buy.

(c) The term “manufacturer” shall mean any person, firm, corporation, partnership, or association engaged either directly or indirectly in the manufacture or wholesale distribution of motor vehicles.

(d) The term “wholesale distributor” shall mean any person, firm, association, corporation or other organization engaged directly or indirectly in the sale or distribution of motor vehicles to agents or to dealers.

(e) The term “dealer” shall mean any person, firm, association or corporation or other organization of any kind, character or nature regularly engaged or intending to engage in the business of selling motor vehicles at retail within this state.

(f) “Finance company” or “finance agency” shall mean any person, firm, association, corporation or other organization engaged in the business of buying, selling, assigning, dealing, financing or acquiring conditional contracts of sale or engaged in the business of purchasing or acquiring promissory notes or any other form or evidences of indebtedness of sale, either secured by vendor’s lien, conditional bill of sale, chattel mortgage, or leases arising out of the sale of motor vehicles in this state.

(g) The term “motor vehicle” shall mean every self-propelled vehicle moving over the highways of this state, whether patented or unpatented. [L. '37, Ch. 144, § 2. Approved March 16, 1937.]

10915.22. Financing agreements—when prohibited and void. It shall be unlawful for any manufacturer or wholesale distributor of motor vehicles to sell or enter into a contract for the sale of motor vehicles to any motor vehicle dealer on the condition or under an agreement, expressed or implied, that such dealer shall finance the purchase or sale of any motor vehicle or vehicles only through a designated finance company or finance agency. Any such condition, agreement or understanding is hereby declared to be against the public policy of the state and such condition, agreement or understanding shall be unlawful, void, and unenforceable, either as [at] law or equity. [L. '37, Ch. 144, § 3. Approved March 16, 1937.]

10915.23. Threats as evidence. Any threat, expressed or implied, made directly or indirectly to any dealer by any manufacturer, or by any person who is engaged in the business of financing the purchase or sale of motor vehicles and is affiliated with or controlled by any manufacturer, that such manufacturer will cease to sell, or will terminate or refuse to enter into a contract to sell motor vehicles to such dealer unless such dealer finances the purchase or sale of any such motor vehicle or vehicles only with or through a designated person, shall be presumed to be made at the direction of and with the authority of such manufacturer and shall be prima facie evidence of the fact that such manufacturer has sold or intends to sell such motor vehicle or vehicles on the condition or under the agree-

ment prohibited by the provisions of this act. [L. '37, Ch. 144, § 4. Approved March 16, 1937.

10915.24. Penalty. Any person who shall violate any of the provisions of this act, and any employee, agent, or officer of any such person who shall participate, in any manner, in making, enforcing or performing, or in aiding or abetting in the performance of any such contract, condition, agreement or understanding shall be deemed guilty of a crime and, upon conviction thereof, shall be punished for each offense by a fine of not more than five thousand dollars (\$5,000.00) or by imprisonment in the penitentiary for not more than five years or in the county jail for not more than one year, or by both such fine and imprisonment. [L. '37, Ch. 144, § 5. Approved March 16, 1937.

10915.25. Suit for injury to business or property—damages. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and recover twofold the damages by him sustained, and the costs of suit. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending or not. [L. '37, Ch. 144, § 6. Approved March 16, 1937.

Section 7 is partial invalidity saving clause.

CHAPTER 15

OTHER MISCELLANEOUS OFFENSES AGAINST PUBLIC JUSTICE

Section

10921. Making arrests — seizure or levy upon property—dispossession of lands without lawful authority—issuance by justice of the peace of writs or process signed in blank.

10921. Making arrests — seizure or levy upon property—dispossession of lands without lawful authority—issuance by justice of the peace of writs or process signed in blank.

Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person, or detains him against his will, or seizes or levies upon any property, or dispossesses any one of his lands or tenements, without a regular process or lawful authority therefor, is guilty of a misdemeanor. And any justice of the peace who furnishes or causes to be furnished to any person or corporation engaged in the collection business or to any other person or corporation, a summons or writ of attachment or both, or a supply of summonses or writs of attachments or both, signed by such justice of the peace in blank, and not then signed or issued by him in any suit then filed or pending before him, or who so furnishes or causes to be furnished to any such person or corporation any writ of execution or supply of writs of execution signed in blank, and with the intent and purpose that any such summons or writ of attachment may, at the time of signing and delivery thereof, or thereafter, be used by such person or corporation by themselves dating the same, inserting the name of a party plaintiff and defendant and otherwise completing the same and causing service of any such summons to be made or levy upon and seizure of property to be made under any such writ of attachment, or with the intent and purpose that any such writ of execution so signed and delivered in blank may then or thereafter be utilized by such person or corporation by themselves dating the same and entitling the same in any cause of action in which said justice of the peace has theretofore or may thereafter render judgment, shall be guilty of a misdemeanor and on conviction thereof shall forfeit his office and shall be disqualified from thereafter holding the office of justice of the peace. [L. '39, Ch. 197, § 1, amending R. C. M. 1935, § 10921. Approved and in effect March 17, 1939.

Section 2 repeals conflicting laws.

10936. Common barratry defined — how punished.

1937. Cited in State ex rel. Freebourn v. Merchants' Credit Service, 104 Mont. 76, 66 P. (2d) 337.

10937. What proof is required.

1937. Cited in State ex rel. Freebourn v. Merchants' Credit Service, 104 Mont. 76, 66 P. (2d) 337.

10944. Criminal contempts.

1938. Cited in Pelletier v. Glacier County, 107 Mont. 221, 82 P. (2d) 595, distinguishing between various kinds of contempt.

1936. The publisher of a grossly inaccurate report of a decision of the supreme court could be punished for contempt by the court for such publication made before the expiration of the period of ten days after the rendition of the decision, allowed for filing a petition for a rehearing under court

rule 20, since the court still retained jurisdiction of the case, and it was still pending. *In re Nelson et al.*, 103 Mont. 43, 60 P. (2d) 365.

1936. Published report of court decision held grossly inaccurate. *In re Nelson et al.*, 103 Mont. 43, 60 P. (2d) 365.

1936. Contempt in publishing a grossly inaccurate report of a decision of the supreme court held shown by the evidence. *In re Nelson et al.*, 103 Mont. 43, 60 P. (2d) 365.

1936. Contempt in publishing a false and grossly inaccurate report of a decision of the court is to the court, rather than to any judge thereof, and for the libel of an individual judge there exists a remedy, either by civil or criminal action. *In re Nelson et al.*, 103 Mont. 43, 60 P. (2d) 365.

1936. In contempt proceedings for publishing a false and grossly inaccurate report of a judicial decision, the respondent's sworn return stating that he had no intent to treat the court with contempt was held not conclusive where he offered no evidence in support thereof and was unwilling to submit the statement to the acid test of cross-examination. *In re Nelson et al.*, 103 Mont. 43, 60 P. (2d) 365.

1936. In proceedings to punish for contempt for publishing a false or grossly inaccurate report of a court other articles in the same publication are admissible to corroborate evidence of intent of such publication. *In re Nelson et al.*, 103 Mont. 43, 60 P. (2d) 3365, holding, also, that it was proper to allow judges of the court to testify on the question of intent, which was undisputed.

10951. Offense for which no penalty is prescribed.

1935. The district court has jurisdiction of all public offenses not otherwise provided for, and, therefore, has jurisdiction of misdemeanors only in exceptional cases, and, unless a law specifically provides that the court shall have jurisdiction in cases of its violation or fixes the penalty above the maximum jurisdiction of the justices' courts, cases of violation fall within the exclusive jurisdiction of the latter courts. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

10976. Assault in the first degree defined—penalty.

1937. Cited in *State v. Laughlin*, 105 Mont. 490, 73 P. (2d) 718.

10977. Assault in second degree.

1937. Instruction defining grievous bodily harm held proper. *State v. Laughlin*, 105 Mont. 490, 73 P. (2d) 718.

1937. Pounding an aged man about the head and face with the fists and beating his head on the sidewalk constituted assault in the second degree rather than in the third degree. *State v. Laughlin*, 105 Mont. 490, 73 P. (2d) 718.

1935. The provision of section 10672(3) applies to both civil and criminal cases. *State v. Hogan*, 100 Mont. 434, 49 P. (2d) 446.

1935. Instruction that the entire testimony of a witness who had testified falsely could be disregarded by the jury held reversible error although he had been convicted of felonies. *State v. Hogan*, 100 Mont. 434, 49 P. (2d) 446.

Subdivision (3).

1938. Cited in *State v. Williams*, 106 Mont. 516, 79 P. (2d) 314, stating that the use of the word "feloniously" in describing the acts of the defendant will not take the place of the words "wilfully" or "wrongfully" in charging the crime of second degree assault as defined in subdivision (3) of this section.

CHAPTER 20

ASSAULT

10978. Assault in third degree.

1937. Pounding an aged man about the head and face with the fists and beating his head on the sidewalk constituted assault in the second degree rather than in the third degree. *State v. Laughlin*, 105 Mont. 490, 73 P. (2d) 718.

1937. A mere trespass upon the person of another or a simple beating comes under assault in the third degree. *State v. Laughlin*, 105 Mont. 490, 73 P. (2d) 718.

10980. Use of force not unlawful.

1939. "Our statute controls as to the amount of force that can be exerted against a trespasser." *Vaughn v. Mesch*, 107 Mont. 498, 87 P. (2d) 177.

1939. An instruction prohibiting the use of a dangerous weapon against a trespasser, no matter how and in what manner it is used, or however slight the resulting injuries are, was held erroneous in *Vaughn v. Mesch*, 107 Mont. 498, 87 P. (2d) 177.

CHAPTER 23

RAPE—ABDUCTION—CARNAL ABUSE OF CHILDREN — ADULTRY AND SEDUCTION—PROSTITUTION OF WOMEN

11007. Seduction — penalty.

1938. Cited in *Taylor v. Rann*, 106 Mont. 588, 80 P. (2d) 376, holding that a civil action for seduction was barred by the statute of limitations where instituted more than two years after the first act of intercourse.

CHAPTER 26

BIGAMY—INCEST AND CRIME AGAINST NATURE

11030. Crime against nature.

1938. Corroboration of evidence of accomplice held insufficient to sustain conviction. *State v. Keckonen*, 107 Mont. 253, 84 P. (2d) 341.

CHAPTER 29

MAINTENANCE OF COMMON NUISANCES IN CONNECTION WITH THE SALE OF INTOXICATING LIQUORS, OPIUM, PROSTITUTION, AND GAMBLING

11124. Certain buildings declared nuisances.

1936. Where investigators for the state in an action to abate a nuisance testified without notes after refreshing their memories for them, discrepancies did not make such investigators unworthy of belief. State ex rel. Nagle v. Naughton, 103 Mont. 306, 63 P. (2d) 123.

1936. In action to abate a nuisance a discrepancy between affidavits of investigators for the state and their testimony as to the time when they visited the premises alleged to be a nuisance, held not to make investigators unworthy of belief. State ex rel. Nagle v. Naughton, 103 Mont. 306, 63 P. (2d) 123.

1936. Maintenance of a cigar store where card games were played for money held a nuisance and it was abated by injunction ordering the removal of all fixtures, etc., used in conducting such nuisance, from the premises, that the fixtures be sold and proceeds used as provided by section 11130, that the premises be closed for one year, and that the operator, his servants, etc., be perpetually enjoined from conducting such nuisance. State ex rel. Nagle v. Naughton, 103 Mont. 306, 63 P. (2d) 123. See, also, State ex rel. Nagle v. Antinoli, 103 Mont. 321, 63 P. (2d) 129.

11127. Precedence of actions — dismissal — costs.

1936. Maintenance of a cigar store where card games were played for money held a nuisance and it was abated by injunction ordering the removal of all fixtures, etc., used in conducting such nuisance, from the premises, that the fixtures be sold and proceeds used as provided by section 11130, that the premises be closed for one year, and that the operator, his servants, etc., be perpetually enjoined from conducting such nuisance. State ex rel. Nagle v. Naughton, 103 Mont. 306, 63 P. (2d) 123. See, also, State ex rel. Nagle v. Antinoli, 103 Mont. 321, 63 P. (2d) 129.

11129. Order of abatement—sale of fixtures—closing of buildings—fees—service.

1936. Maintenance of a cigar store where card games were played for money held a nuisance and it was abated by injunction ordering the removal of all fixtures, etc., used in conducting such nuisance, from the premises, that the fixtures be sold and proceeds used as provided by section 11130, that the premises be closed for one year, and that the operator, his servants, etc., be perpetually enjoined from conducting such nuisance. State ex rel. Nagle v. Naughton, 103 Mont. 306, 63 P. (2d) 123. See, also, State ex rel. Nagle v. Antinoli, 103 Mont. 321, 63 P. (2d) 129.

11130. Proceeds of sale, how applied.

1936. Maintenance of a cigar store where card games were played for money held a nuisance and it was abated by injunction ordering the removal of all fixtures, etc., used in conducting such nuisance, from the premises, that the fixtures be sold and proceeds used as provided by section 11130,

that the premises be closed for one year, and that the operator, his servants, etc., be perpetually enjoined from conducting such nuisance. State ex rel. Nagle v. Naughton, 103 Mont. 306, 63 P. (2d) 123. See, also, State ex rel. Nagle v. Antinoli, 103 Mont. 321, 63 P. (2d) 129.

CHAPTER 31

LOTTERIES

11149. Lottery defined.

1937. Ordinarily a charge set in the language of the lottery statute is sufficient. State v. Hahn, 105 Mont. 270, 72 P. (2d) 459.

1937. To constitute a lottery the prize offered may be either money or merchandise. State v. Hahn, 105 Mont. 270, 72 P. (2d) 459.

1937. In determining whether a game is one of skill or chance the test of the character of the game is not whether it contains an element of chance or an element of skill, but which is the dominating element that determines the result of the game. State v. Hahn, 105 Mont. 270, 72 P. (2d) 459.

1937. The legal requisites to charge the offense of operating a lottery under the Montana statutes are: The offering of a prize; the awarding of the prize by chance; and the giving of consideration for an opportunity to win the prize. State v. Hahn, 105 Mont. 270, 72 P. (2d) 459.

1937. An information charging the operation of a lottery in the language of the statute held sufficient though it described the game as "skill ball," giving particulars. State v. Hahn, 105 Mont. 270, 72 P. (2d) 459.

CHAPTER 32

GAMBLING

Section

11159. Gambling games prohibited—enumeration — penalty — exceptions — card tables — license fee—pastime games—minors —trade stimulators—license fee.

11159.1. License — application — expiry — fees — disposition.

11159.2. Exemptions from act.

11159. Gambling games prohibited—enumeration — penalty — exceptions — card tables—license fee — pastime games — minors — trade stimulators—license fee. Every person who deals, or carries on, opens or causes to be opened, or who conducts, or causes to be conducted, operates or runs, either as principal, agent, owner or employee, whether for hire, or not, any game of monte, dondo, fan-tan, tan, stud horse poker, craps, seven and a half, twenty-one, faro, roulette, pangenì or pangene, hokey-pokey, draw-poker, or the game commonly known as round-the-table poker, or any banking or percentage game, or any game commonly known as sure-thing game, or any game of chance played with cards, dice or any device

whatsoever, or who runs or conducts or causes to be run or conducted, or keeps any slot machine, punch board, or other similar machine or device, or permits the same to be run or conducted for money, checks, credits, or any representative of value, or any property or thing whatsoever, or any person owning or in charge of any cigar store, drug store, or other place of business, or any place where drinks are sold or served, who permits any of the games prohibited in this section to be played, in or about such cigar store, drug store, or other place of business, or permits any slot machine, punch board, or similar device to be kept therein, or any person or persons who conduct any bucket-shop where stocks or securities of any kind are sold on margins, and every person who plays or bets at or against said prohibited games or devices, except as hereinafter provided, is guilty of a misdemeanor and shall be punishable by a fine of not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000.00), and may be imprisoned for not less than three (3) months, nor more than one (1) year, or by both such fine and imprisonment; provided, however, that it shall be lawful for cigar stores, fraternal organizations, charitable organizations, drug stores and other places of business, upon the payment of a license fee therefor to the county treasurer in the sum of ten dollars (\$10.00) annually per table used or operated in such place of business, to maintain and keep for the use and pleasure of the customers and patrons, card tables and cards with which and at which such games as rummy, whist, bridge whist, black jack, euchre, pinochle, pangene or pangeni, seven-up, hearts, freeze-out, casino, solo, cribbage, five hundred, penie ante, dominos, high-five and checkers may be played for pastime and amusement by customers who are not minors, and for the maintenance of which a charge may be made, to be paid by the users by the purchase of trade checks which must be redeemable in merchandise at the going retail price of such merchandise, which is the stock in trade of such business; and that places of business may, upon the payment of a license fee therefor to the county treasurer in the sum of ten dollars (\$10.00) annually, exhibit for use and sale to all customers not minors, trade stimulators, such as pull boards and ticket boards, where each board so used returns to the owner or business not to exceed the going retail price of the goods disposed of and sold and disposed of through the use of the same, and which goods sold and disposed of through the use of the same must not be other than the goods constituting the

usual stock in trade of the business using the same. [L. '37, Ch. 153, § 1, amending R. C. M. 1935, § 11159. Approved and in effect March 16, 1937.

1938. The proviso as to the checks does not authorize their use to gamble with in a card game, but are intended only to use in payment for goods purchased and for the use of the cards and tables. *State v. Aldahl*, 106 Mont. 390, 78 P. (2d) 935.

11159.1. License — application — expiry — fees — disposition. The license fee provided for in the preceding section shall be paid to the treasurer of the county in which such licensee operates before any of the acts or things herein licensed and permitted shall be done, operated, or used, and the applicant for a license shall along with the amount of the license fee, send or give to the county treasurer the name and location of the business for which the license is sought, together with the names of all the owners thereof, whereupon the county treasurer shall issue a license to said place of business, which license shall show on the face thereof, the number of card tables for which license is paid, and the trade stimulators, if any, for the use of which license is paid. All licenses issued hereunder shall expire each and every year at midnight, the 31st day of December, of the calendar year for which they are issued. The funds so received shall be deposited in the poor fund of the county. [L. '37, Ch. 153, § 2. Approved and in effect March 16, 1937.

11159.2. Exemptions from act. That any religious, fraternal or charitable organization, and all private homes, are not included within the provisions of this act. [L. '37, Ch. 153, § 3. Approved and in effect March 16, 1937.

Section 4 repeals conflicting laws.

CHAPTER 39

EMBEZZLEMENT AND OTHER OFFENSES BY PUBLIC OFFICERS

11318. Embezzlement by public officer.

1937. An information charging embezzlement from a date named and for two years thereafter was not duplicitous, where the crime was accomplished by a continuous series of acts. *State v. Kurth*, 105 Mont. 260, 72 P. (2d) 687.

1937. In the prosecution of a city water registrar for embezzlement of public funds an ordinance requiring him to make daily reports and account for collections was properly pleaded to show that he was chargeable with the receipt, safekeeping, and transfer of public funds, but resort to section 11318 was necessary to determine whether a crime had been committed under that section. *State v. Kurth*, 105 Mont. 260, 72 P. (2d) 687.

1937. In a prosecution of a city water registrar on embezzlement charge for failure to turn over daily all receipts of water payments by water users,

as required by ordinance, the state was entitled to prove the general shortage extending over a period of two years, instead of daily shortages, in order to obviate the necessity of proving the necessary intent as to the daily shortage. *State v. Kurth*, 105 Mont. 260, 72 P. (2d) 687, holding, also, that the state, after furnishing a bill of particulars, showing the general shortage and certain particular items not accounted for, could prove by a state examiner, who had examined ledgers, what the general shortage was, where additional items were properly accounted for by the defendant, as the bill of particulars was not thereby enlarged. *State v. Kurth*, 105 Mont. 260, 72 P. (2d) 687.

1937. In a prosecution for embezzlement of public funds held that the defendant was not misled by a bill of particulars as to particular shortages for which he was required to account. *State v. Kurth*, 105 Mont. 260, 72 P. (2d) 687.

CHAPTER 43

LARCENY

11368. Larceny defined.

1939. Where defendant's explanation of shortage of public funds was consistent with his innocence, the state's prima facie case made by showing the shortage was overcome and verdict of guilty could not stand. *State v. McGuire*, Mont., 88 P. (2d) 35.

11371. Grand Larceny defined.

1939. Where there was no evidence that property was taken otherwise than the person of another, it was held that an instruction on larceny and its degrees which did not limit grand larceny to the taking of more than \$50, though request therefor was made, was not error. *State v. Fisher*, Mont., 88 P. (2d) 53.

CHAPTER 45

FALSE PERSONATION AND CHEATS— FALSE ADVERTISING—FAKERS

11410. Obtaining money or property by false pretenses.

1935. An information for obtaining property by false pretenses need not allege the very words of the pretense or whether it was spoken or written. *State v. Foot*, 100 Mont. 33, 48 P. (2d) 1113, holding the information sufficient.

1935. That the person deceived might have found out the falsity of the defendant's pretenses by telephoning to another city was held no defense to the prosecution. *State v. Foot*, 100 Mont. 33, 48 P. (2d) 1113.

1935. Under this section one of the essential elements of the crime is that the injured party believed the false representations to be true and, relying thereon, parted with money or property which was received by the accused. *State v. Foot*, 100 Mont. 33, 48 P. (2d) 1113, holding evidence sufficient to sustain conviction.

1935. Section 11410, in regard to obtaining money by false pretenses, does not by its terms limit its operation to persons of ordinary caution and prudence, as was the common-law crime limited,

but applies to all persons, and to read the common-law rule into the statute would violate section 10519, on construction of statutes. *State v. Foot*, 100 Mont. 33, 48 P. (2d) 1113.

1935. To sustain conviction the false pretenses must be as to an existing or past fact which are not true. *State v. Foot*, 100 Mont. 33, 48 P. (2d) 1113, holding that the false pretenses were not as to a promise to do something in the future.

CHAPTER 55

PUNISHMENTS—ATTEMPTS AND OTHER GENERAL PROVISIONS

11590. Attempts to commit crime, when punishable.

1937. Information in prosecution for attempt to commit rape held to comply with the statutes with regard to stating facts in ordinary respects. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. Information charging generally an attempt to commit rape held not demurrable or bad as not charging overt act or not sufficiently charging intent. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. In prosecution for attempt to commit rape an instruction in the terms of section 10728 was held proper. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. An information charging an attempt to commit rape held not indefinite and uncertain as to the acts charged, in the absence of a demand for a bill of particulars, and the court did not err in proceeding to trial without requiring the prosecution to amend. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. Specific intent to commit rape is an essential ingredient of the crime of attempt to commit rape. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. In a prosecution for an attempt to commit rape, evidence as to intent held sufficient to sustain conviction, as question of intent was for the jury to decide. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. In prosecution for an attempt to commit rape evidence as the defendant's mental capacity, as against defense of intoxication, held to sustain conviction. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

CHAPTER 57

DEFINITIONS—PROSECUTION OF CRIMINAL ACTIONS—JURISDICTION OF COURTS

11621. Criminal actions in justice court.

1939. Section 12223 does not apply to appeals to the district court from justice court, since their prosecution is by complaint and not by information or indictment, as in the district court. *State v. Schnell*, Mont., 88 P. (2d) 19.

11622. Criminal actions in district court.

1939. Section 12223 does not apply to appeals to the district court from justice court, since their prosecution is by complaint and not by information or indictment, as in the district court. *State v. Schnell*, Mont., 88 P. (2d) 19.

11630. Jurisdiction of justices of the peace.

1939. Section 12223 does not apply to appeals to the district court from justice court, since their prosecution is by complaint and not by information or indictment, as in the district court. *State v. Schnell*, Mont., 88 P. (2d) 19.

1937. The exclusive jurisdiction of a prosecution of one practicing medicine or surgery without a license is in the district court, and not in the justice court, in view of the fact that the maximum penalty in the latter court is a \$500 fine and imprisonment for six months, while the maximum penalty for the above offense is a fine of \$1,000 and imprisonment for one year. *State ex rel. Freebourn v. District Court*, 105 Mont. 77, 69 P. (2d) 748.

1935. The district court has jurisdiction of all public offenses not otherwise provided for, and, therefore, has jurisdiction of misdemeanors only in exceptional cases, and, unless a law specifically provides that the court shall have jurisdiction in cases of its violation or fixes the penalty above the maximum jurisdiction of the justices' courts, cases of violation fall within the exclusive jurisdiction of the latter courts. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

11631. Jurisdiction of district court.

1935. The district court has jurisdiction of all public offenses not otherwise provided for, and, therefore, has jurisdiction of misdemeanors only in exceptional cases, and, unless a law specifically provides that the court shall have jurisdiction in cases of its violation or fixes the penalty above the maximum jurisdiction of the justices' courts, cases of violation fall within the exclusive jurisdiction of the latter courts. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

CHAPTER 63**REMOVAL OF OFFICERS OTHERWISE THAN BY IMPEACHMENT****Section**

11688. Accusation may be presented by grand jury—who may file.

11688. Accusation may be presented by grand jury—who may file. An accusation in writing against any district, county, township, or municipal officer or school trustee, for wilful or corrupt misconduct or malfeasance in office, may be presented by the grand jury, or filed by the county attorney, of the county for which the officer accused is elected or appointed, or an accusation may be filed by the attorney general. [L. '39, Ch. 216, § 1, amending R. C. M. 1935, § 11688. Approved and in effect March 17, 1939.

Section 2 repeals conflicting laws.

11702. Removal of public officers by summary proceedings.

1939. An officer who is charged with charging and collecting illegal fees, and whose removal is sought, is entitled to a trial by jury, and the action must be commenced within forty days from the filing of the accusation. *State ex rel. Galbreath v. District Court for Glacier County et al.*, Mont., 91 P. (2d) 424.

1936. In a hearing for removal of a highway commissioner it was held that it was the duty of the governor to hear the evidence which might be offered in support of the defense of good faith. *State ex rel. Holt v. District Court*, 103 Mont. 438, 63 P. (2d) 1026.

1937. Cited in *State ex rel. Matson v. O'Hern*, 104 Mont. 126, 65 P. (2d) 619, dissenting opinion.

CHAPTER 64**LOCAL JURISDICTION OF PUBLIC OFFENSES****Section**

11712. Property feloniously taken in one county and brought into another, and apportioning costs of prosecution and trial by the judge.

11712. Property feloniously taken in one county and brought into another, and apportioning costs of prosecution and trial by the judge. When property taken in one county by burglary, robbery, or larceny has been brought into another, the jurisdiction of the offense is in either county. But if at any time before the conviction of the defendant in the latter, he is indicted or informed against in the former county, the sheriff of the latter county must, upon demand, deliver him to the sheriff of the former.

Provided, however, that when the trial or prosecution is had in the county to which the property is brought after its taking as aforesaid, the county in which the property was so taken shall be liable for all or such proportion of the costs of the prosecution and trial as the judge of the court in which the prosecution or trial has been or may be had shall or may certify as proper costs against the county in which the property was taken, in the same manner and to the same extent as if the prosecution had been instituted in the county in which the property was so taken as aforesaid; and the proportion of said costs so found as payable by the county from which the property was so taken shall be paid by it in the same manner as if the action or prosecution had been commenced in the latter county and the venue of the action or prosecution changed to the county to which the property is brought, as provided in section 4954 of the revised

codes of Montana, 1935, so far as the same is pertinent hereto. [L. '37, Ch. 21, § 1, amending R. C. M. 1935, § 11712. Approved and in effect February 17, 1937.

Section 2 repeals conflicting laws.

1938. Section 11712 applied in *State v. Akers*, 106 Mont. 43, 74 P. (2d) 1138, a prosecution for horse stealing, where it was held that the county court of the county to which the stolen horse was driven by the thieves had jurisdiction in the absence of a showing that the entire transportation was on Indian land.

CHAPTER 67

THE WARRANT OF ARREST—PROCEEDINGS ON EXECUTION OF THE WARRANT

Section

11737. To what peace officers warrants are to be directed—when and how executed in another county—executed by what officers and arrest.

11737. To what peace officers warrants are to be directed—when and how executed in another county—executed by what officers and arrest. If it is issued by any other magistrate it may be directed generally to any sheriff, constable, marshal, or policeman in the county in which it is issued, and may be executed by such officer in any part of the state, and if the complaint, on which the warrant is issued, has been subscribed and sworn to by the county attorney of the county in which it was issued, the warrant may be executed by any of those officers to whom it may be delivered in any part of the state, in which case the arrest may also be made by telegraph in the same manner as provided in sections 11767 and 11768 of this code. [L. '39, Ch. 152, § 1, amending R. C. M. 1935, § 11737. Approved and in effect March 11, 1939.

Section 2 repeals conflicting laws.

CHAPTER 68A

UNIFORM ACT ON CLOSE PURSUIT

Section

- 11772.1. Arrest by officer from another state—authority.
- 11772.2. Legality of arrest—hearing—duty of judge.
- 11772.3. Construction of act.
- 11772.4. "State" includes District of Columbia.
- 11772.5. Certification of act to other states—duty of secretary of state.
- 11772.6. Short title of act.

11772.1. Arrest by officer from another state—authority. Any peace officer of another state of the United States, who enters this state in close pursuit and continues within this state in such close pursuit of a person in order to arrest him, shall have the same authority to arrest and hold in custody such person, as peace officers of this state have to arrest and hold in custody a person on the ground that he has committed a crime in this state. [L. '37, Ch. 187, § 1. Approved and in effect March 18, 1937.

11772.2. Legality of arrest—hearing—duty of judge. If an arrest is made in this state by an officer of another state in accordance with the provisions of section 1 [11772.1] of this act, he shall, without unnecessary delay, take the person arrested before a judge of a court of record who shall conduct a hearing for the sole purpose of determining if the arrest was in accordance with the provisions of section 1 [11772.1], and not of determining the guilt or innocence of the arrested person. If the judge determines that the arrest was in accordance with such provisions, he shall commit the person arrested to the custody of the officer making the arrest, who shall without unnecessary delay take him to the state from which he fled. If the judge determines that the arrest was unlawful, he shall discharge the person arrested. [L. '37, Ch. 187, § 2. Approved and in effect March 18, 1937.

11772.3. Construction of act. Section 1 [11772.1] of this act shall not be construed so as to make unlawful any arrest in this state which would otherwise be unlawful. [L. '37, Ch. 187, § 3. Approved and in effect March 18, 1937.

Note. This section is printed exactly as it appears in the session laws.

11772.4. "State" includes District of Columbia. For the purpose of this act the word state shall include the District of Columbia. [L. '37, Ch. 187, § 4. Approved and in effect March 18, 1937.

11772.5. Certification of act to other states—duty of secretary of state. Upon the passage and approval by the governor of this act, it shall be the duty of the secretary of the state (or other officer) to certify a copy of this act to the executive department of each of the states of the United States. [L. '37, Ch. 187, § 5. Approved and in effect March 18, 1937.

11772.6. Short title of act. This act may be cited as the uniform act on close pursuit. [L. '37, Ch. 187, § 7. Approved and in effect March 18, 1937.

Section 6 is partial invalidity saving clause.

CHAPTER 70

PRELIMINARY PROVISIONS—FILING THE INFORMATION

11801. Information to be filed.

1938. "There can be no interpretation put upon any statute of the state which will take away the constitutional right of prosecution by information filed in the district court after leave has been granted by the court, where there has been no examination and commitment, or where there has been no prosecution by indictment." *State ex rel. Juhl v. District Court*, 107 Mont. 309, 84 P. (2d) 979.

1938. "Leave of court to file an information, although an old common-law practice, is not followed generally in other jurisdictions." *State ex rel. Juhl v. District Court*, 107 Mont. 309, 84 P. (2d) 979.

1938. "Obtaining leave of court has never been considered merely a perfunctory matter in this jurisdiction, but must be attended with more or less formality." *State ex rel. Juhl v. District Court*, 107 Mont. 309, 84 P. (2d) 979.

1938. "If an application made by the county attorney to the district judge for leave of court to file an information against any person shall be granted as a matter of course, we can conceive of no reason why the county attorney should be required to file his motion for leave of court in writing accompanied by certain other formalities provided by the statute." *State ex rel. Juhl v. District Court*, 107 Mont. 309, 84 P. (2d) 979.

1938. There must be sufficient facts and information presented to the court, on an application to file an information, to move its discretion to grant the application. *State ex rel. Juhl v. District Court*, 107 Mont. 309, 84 P. (2d) 979.

1938. After dismissal of a former information filed, a new application for leave to file a new information must be just as complete and formal as though the matter had never been before the court, and the mere statement of the county attorney that he is satisfied that the defendant is guilty of the crime as charged in the information as originally filed is not sufficient. *State ex rel. Juhl v. District Court*, 107 Mont. 309, 84 P. (2d) 979.

11804. Information may be amended.

1937. Where the defendant was tried for the theft of a colt, convicted, and placed in jail, and then granted a new trial for failure of proof of the ownership of the colt, he could not plead once in jeopardy to a second information for stealing one of three other colts stolen at the same time, since, instead of filing a new information the prior information could have been amended so as to charge the theft of one of the latter three colts. *State v. Aus*, 105 Mont. 82, 69 P. (2d) 584.

11805. Indorsement on information.

1938. Where names of three witnesses were endorsed on an information, in accordance with this section, the endorsement of seven additional witnesses on the morning of the trial was not prejudicial error where only four testified and there was no showing that the county attorney knew at the time of filing the information that any of the additional seven would be material witnesses. *State v. Gaffney*, 106 Mont. 310, 77 P. (2d) 398.

1938. The purpose of section 11805 is to appraise the defendant of his accusers and give him time to prepare to meet their testimony, but it does not prevent the state from using witnesses who were not so indorsed on the information. *State v. Akers*, 106 Mont. 43, 74 P. (2d) 1138.

CHAPTER 72

RULES OF PLEADING AND FORM OF THE INFORMATION AND INDICTMENT

11843. Indictment, or information, what to contain.

1937. An information charging the operation of a lottery in the language of the statute held sufficient though it described the game as "skill ball," giving particulars. *State v. Hahn*, 105 Mont. 270, 72 P. (2d) 459.

1937. An information charging an attempt to commit rape held not indefinite and uncertain as to the acts charged, in the absence of a demand for a bill of particulars, and the court did not err in proceeding to trial without requiring the prosecution to amend. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. Information charging generally an attempt to commit rape held not demurrable or bad as not charging overt act or not sufficiently charging intent. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. Information in prosecution for attempt to commit rape held to comply with the statutes with regard to stating facts in ordinary respects. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

11845. It must be direct and certain.

1937. An information charging the operation of a lottery in the language of the statute held sufficient though it described the game as "skill ball," giving particulars. *State v. Hahn*, 105 Mont. 270, 72 P. (2d) 459.

1937. Information in prosecution for attempt to commit rape held to comply with the statutes with regard to stating facts in ordinary and concise language and to be direct and certain in particular respects. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. Information charging generally an attempt to commit rape held not demurrable or bad as not charging overt act or not sufficiently charging intent. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. An information charging an attempt to commit rape held not indefinite and uncertain as to the acts charged, in the absence of a demand for a bill of particulars, and the court did not err in proceeding to trial without requiring the prosecution to amend. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

11853. Not insufficient for defect of form not tending to prejudice defendant.

1937. When the whole record is sufficient to establish the guilt of the defendant, even though there was error, a new trial will not be granted unless it clearly appears that the error complained of actually prejudiced the defendant in his right to a fair trial. *State v. Laughlin*, 105 Mont. 490, 73 P. (2d) 718.

1937. An information charging an attempt to commit rape held not indefinite and uncertain as to the acts charged, in the absence of a demand for a bill of particulars, and the court did not err in proceeding to trial without requiring the prosecution to amend. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. Information charging generally an attempt to commit rape held not demurrable or bad as not charging overt act or not sufficiently charging intent. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

11870. Amendment allowed on trial, when.

1937. Where the defendant was tried for the theft of a colt, convicted, and placed in jail, and then granted a new trial for failure of proof of the ownership of the colt, he could not plead once in jeopardy to a second information for stealing one of three other colts stolen at the same time, since, instead of filing a new information the prior information could have been amended so as to charge the theft of one of the latter three colts. *State v. Aus*, 105 Mont. 82, 69 P. (2d) 584.

11874. When not material.

1937. An information charging an attempt to commit rape held not indefinite and uncertain as to the acts charged, in the absence of a demand for a bill of particulars, and the court did not err in proceeding to trial without requiring the prosecution to amend. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. Information charging generally an attempt to commit rape held not demurrable or bad as not charging overt act or not sufficiently charging intent. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

CHAPTER 74

SETTING ASIDE THE INDICTMENT OR INFORMATION

11891. Indictment, when set aside on motion.

1938. "There can be no interpretation put upon any statute of the state which will take away the constitutional right of prosecution by information filed in the district court after leave has been granted by the court, where there has been no examination and commitment, or where there has been no prosecution by indictment." *State ex rel. Juhl v. District Court*, 107 Mont. 309, 84 P. (2d) 979.

1935. An information may be filed on leave of court after the court has continued a preliminary hearing more than ten days without consent of the defendant. *State v. Foot*, 100 Mont. 33, 48 P. (2d) 1113.

1935. An information can only be filed after examination and commitment where leave to file of court has never been obtained. *State v. Foot*, 100 Mont. 33, 48 P. (2d) 1113.

CHAPTER 75

DEMURRER

11901. Judgment on demurrer.

1938. Record on appeal held sufficient where all the papers mentioned in section 12074 were con-

tained therein except "charges given or refused, and the indorsements thereon," where the cause had reached only the demurrer stage, and settled bills of exceptions as contemplated by section 12042, an order sustaining, constituting a judgment under section 11901. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

11902. If allowed, bar to another prosecution, when.

1937. That an information charging the practicing of medicine and surgery without a license was insufficient would not warrant a dismissal if in the opinion of the court the objection could be avoided by an amended information. *State ex rel. Freebourn v. District Court*, 105 Mont. 77, 69 P. (2d) 748.

CHAPTER 78

MODE OF TRIAL—FORMATION OF JURY AND CALENDAR OF ISSUES—POSTPONEMENT OF TRIAL

11935. Defendant entitled to two days to prepare for trial.

1938. Where an information was sufficient to charge attempted arson, without an amendment charging the intent to burn the building and the means used to do so, which amendment was inserted on the information at the time of trial after ten days' notice of intent to do so, it was not prejudicial error to require the defendant to go to trial at once after rearraignment and plea of not guilty, without the two days' delay, since the amendment added nothing that could not have been obtained by the defendant in a bill of particulars. *State v. Gaffney*, 106 Mont. 310, 77 P. (2d) 398.

CHAPTER 80

THE TRIAL

11971. Defendant presumed innocent—reasonable doubt.

1938. "A defendant cannot be convicted upon conjecture, however shrewd, or suspicion, however well founded." *State v. Keckonen*, 107 Mont. 253, 84 P. (2d) 341.

11987. Evidence of false pretenses.

1935. An information for obtaining property by false pretenses need not allege the very words of the pretense or whether it was spoken or written. *State v. Foot*, 100 Mont. 33, 48 P. (2d) 1113, holding the information sufficient.

11988. Conviction on testimony of accomplice.

1938. The question whether there was sufficient corroborating evidence of the testimony of an accomplice in a prosecution for horse stealing was held for the trial court in *State v. Akers*, 106 Mont. 43, 74 P. (2d) 1138.

1938. Whether witnesses who corroborated the testimony of an accomplice that the defendant was guilty were themselves accomplices was held for the jury in *State v. Akers*, 106 Mont. 43, 74 P. (2d) 1138.

1938. In a prosecution for horse stealing the testimony of two witnesses that they were hired by the defendant to drive a team of horses, that one of them was the stolen horse, and that they were paid by defendant therefor, together with other circumstances shown apart from the testimony of an accomplice, was held sufficient to connect the defendant with the crime, if the two witnesses were not themselves accomplices. *State v. Akers*, 106 Mont. 43, 74 P. (2d) 1138.

1938. While there can be no conviction upon the uncorroborated testimony of an accomplice, yet the accomplice need not be corroborated upon every fact to which he testified, nor need the corroborating evidence be sufficient, if standing alone, to convict, nor absolutely connect the defendant with the crime. It is sufficient if the corroborating evidence tends to connect the defendant with the perpetration of the crime charged. *State v. Akers*, 106 Mont. 43, 74 P. (2d) 1138.

1938. This section "imperatively makes corroboration of the testimony of an accomplice an essential prerequisite to the conviction of a defendant where the crime charged rests primarily and solely upon the testimony of an accomplice; and it is apparent, therefore, that the court has no control over the subject except to apply the statute. The court has no discretion in the matter, * * *." *State v. Keckonen*, 107 Mont. 253, 84 P. (2d) 341.

1938. Evidence, in an attempted arson case, held sufficiently to corroborate the testimony of the defendant's accomplice, who attempted to fire a building, where it was shown that the defendant paid money to and associated with the alleged accomplice and would profit by the burning of the building. *State v. Gaffney*, 106 Mont. 310, 77 P. (2d) 398.

1938. Evidence held to sufficiently corroborate the testimony of an accomplice to convict of horse stealing in *State v. Akers*, 106 Mont. 43, 74 P. (2d) 1138.

1938. Where the trial court could not say that there was corroborating evidence of alleged accomplices until the jury found that they were accomplices, an instruction on the subject of the corroboration was held properly given in *State v. Akers*, 106 Mont. 43, 74 P. (2d) 1138.

1938. "After there has been the necessary corroboration of the testimony of an accomplice, the jury may then weigh the entire testimony of the accomplice in order to determine the guilt of the defendant." *State v. Keckonen*, 107 Mont. 253, 84 P. (2d) 341.

1938. The evidence independent of the testimony of the accomplice must not merely show that a crime has been committed, but must tend to show that the defendant was connected with the commission thereof, and must be as to a material matter. *State v. Keckonen*, 107 Mont. 253, 84 P. (2d) 341.

1938. "If the conclusion to be reached from the alleged corroborative evidence is equally consonant with a reasonable explanation pointing toward innocent conduct on the part of defendant, then such evidence does not tend to connect him with the commission of the offense, and 'any inference drawn from such testimony, however shrewd, is still in the realm of speculation'." *State v. Keckonen*, 107 Mont. 253, 84 P. (2d) 341.

1938. Corroboration that merely shows that the defendant had the opportunity to commit the crime charged is not sufficient corroboration of an accomplice. *State v. Keckonen*, 107 Mont. 253, 84 P. (2d) 341.

1938. Evidence in a sodomy case held insufficient to corroborate evidence of the accomplice so as to sustain a conviction. *State v. Keckonen*, 107 Mont. 253, 84 P. (2d) 341.

CHAPTER 82

THE VERDICT

12027. Jury may assess punishment.

1935. While they may, if they see fit, assess and declare the punishment in their verdict, it is the court which pronounces judgment and sentences the defendant, and the court only, and not the jury, can suspend the execution of the sentence and place the defendant on probation. *State v. Simanton*, 106 Mont. 292, 49 P. (2d) 981.

CHAPTER 83

BILLS OF EXCEPTIONS

12038. Exceptions to decision of court by either party.

1938. A record on appeal held sufficient though lacking a bill of exceptions since section 12041 provides that no exceptions need be taken to the court's ruling on demurrer, section 12038, and, therefore, a bill of exceptions on that point would serve no purpose where the demurrer and ruling thereon are already included as part of the judgment roll. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

12041. Exceptions in criminal trials—when not necessary.

1938. A record on appeal held sufficient though lacking a bill of exceptions since section 12041 provides that no exceptions need be taken to the court's ruling on demurrer, section 12038, and, therefore, a bill of exceptions on that point would serve no purpose where the demurrer and ruling thereon are already included as part of the judgment roll. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

12042. What bill of exceptions to contain.

1938. Record on appeal held sufficient where all the papers mentioned in section 12074 were contained therein except "charges given or refused, and the indorsements thereon," where the cause had reached only the demurrer stage, and settled bills of exceptions as contemplated by section 12042, an order sustaining, constituting a judgment under section 11901. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

12045. Record on appeal in criminal cases.

1938. Record on appeal held sufficient where all the papers mentioned in section 12074 were contained therein except "charges given or refused, and the indorsements thereon," where the cause had reached only the demurrer stage, and settled bills of exceptions as contemplated by section 12042, an order sustaining, constituting a judgment under section 11901. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938. In passing on the sufficiency of a record on appeal of a case which had only reached the demurrer stage, it was said that "to say that this appeal can only be presented by a bill of exceptions would do violence to the plain meaning of section 12045, which, construed with section 12074, would seem to contemplate such a bill only when same had of necessity been settled. The suggested procedure would be an idle act, section 8761, which, if required, would in effect add nothing to the record but the signature of the trial judge." *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938. A record on appeal held sufficient though lacking a bill of exceptions since section 12041 provides that no exceptions need be taken to the court's ruling on demurrer, section 12038, and, therefore, a bill of exceptions on that point would serve no purpose where the demurrer and ruling thereon are already included as part of the judgment roll. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1938. Section 9347 R. C. M. 1907, cited in *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

CHAPTER 84

NEW TRIALS

12046. New trial defined.

1937. Where the defendant was tried for the theft of a colt, convicted, and placed in jail, and then granted a new trial for failure of proof of the ownership of the colt, he could not plead once in jeopardy to a second information for stealing one of three other colts stolen at the same time, since, instead of filing a new information the prior information could have been amended so as to charge the theft of one of the latter three colts. *State v. Aus*, 105 Mont. 82, 69 P. (2d) 584.

1937. When a new trial has been granted the defendant is not placed in a new jeopardy by the second trial, but is merely subjected to the same jeopardy that he was in on the first trial. *State v. Aus*, 105 Mont. 82, 69 P. (2d) 584.

12047. Its effect.

1938. Record on appeal held sufficient where all the papers mentioned in section 12074 were contained therein except "charges given or refused, and the indorsements thereon," where the cause had reached only the demurrer stage, and settled bills of exceptions as contemplated by section 12042, an order sustaining, constituting a judgment under section 11901. *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

1937. Where the defendant was tried for the theft of a colt, convicted, and placed in jail, and then granted a new trial for failure of proof of the ownership of the colt, he could not plead once in jeopardy to a second information for stealing one of three other colts stolen at the same time, since, instead of filing a new information the prior information could have been amended so as to charge the theft of one of the latter three colts. *State v. Aus*, 105 Mont. 82, 69 P. (2d) 584.

1937. When a new trial has been granted the defendant is not placed in a new jeopardy by the second trial, but is merely subjected to the same jeopardy that he was in on the first trial. *State v. Aus*, 105 Mont. 82, 69 P. (2d) 584.

CHAPTER 86

THE JUDGMENT—SUSPENSION OF SENTENCE AND PROBATION

Section

12078. Court may suspend sentence—when juvenile delinquents—revocation of suspended sentence—hearing.

12082.1. Suspended sentence—retention of jurisdiction by court—copy of judgment and order of suspension—mailing to board of prison commissioners and bureau of identification—duty of court clerk.

12055. Appointing time for judgment.

1935. While they may, if they see fit, assess and declare the punishment in their verdict, it is the court which pronounces judgment and sentences the defendant, and the court only, and not the jury, can suspend the execution of the sentence and place the defendant on probation. *State v. Simanton*, 100 Mont. 292, 49 P. (2d) 981.

12056. Upon plea of guilty, court must determine degree.

1935. While they may, if they see fit, assess and declare the punishment in their verdict, it is the court which pronounces judgment and sentences the defendant, and the court only, and not the jury, can suspend the execution of the sentence and place the defendant on probation. *State v. Simanton*, 100 Mont. 292, 49 P. (2d) 981.

12074. Entry of judgment and judgment-roll.

1938. In passing on the sufficiency of a record on appeal of a case which had only reached the demurrer stage, it was said that "to say that this appeal can only be presented by a bill of exceptions would do violence to the plain meaning of section 12045, which, construed with section 12074, would seem to contemplate such a bill only when same had of necessity been settled. The suggested procedure would be an idle act, section 8761, which, if required, would in effect add nothing to the record but the signature of the trial judge." *State v. Safeway Stores, Inc.*, 106 Mont. 182, 76 P. (2d) 81.

12078. Court may suspend sentence—when juvenile delinquents—revocation of suspended sentence—hearing. In all prosecutions for crimes or misdemeanors, except as hereinafter provided, where the defendant has pleaded or been found guilty, or where the court or magistrate has power to sentence such defendant to any penal or other institution in this state, and it appears that the defendant has never before been imprisoned for crime either in this state or elsewhere (but detention in an institution for juvenile delinquents shall not be considered imprisonment), and where it appears to the satisfaction of the court that the character of the defendant and circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and where it may appear that the public safety does not demand or require that the defendant shall suffer the penalty imposed by law, said

court may suspend the execution of the sentence and place the defendant on probation in the manner hereinafter provided. Nothing in this act contained shall in any manner affect the laws providing the method of dealing with the juvenile delinquents. Any judge, who has suspended a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence to revoke such suspension and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of prison commissioners as provided by law, or retain such jurisdiction with his court as is authorized by him or his successor. Prior to such revocation of the order of such suspension the person affected shall be given a hearing before said judge. [L. '37, Ch. 184, § 1, amending R. C. M. 1935, § 12078. Approved and in effect March 18, 1937.]

Section 2 repeals conflicting laws.

1935. While they may, if they see fit, assess and declare the punishment in their verdict, it is the court which pronounces judgment and sentences the defendant, and the court only, and not the jury, can suspend the execution of the sentence and place the defendant on probation. *State v. Simanton*, 100 Mont. 292, 49 P. (2d) 981.

1935. A justice of the peace on sentencing a defendant and suspending sentence loses jurisdiction of him and cannot thereafter incarcerate him; but the justice may still perform ministerial acts in connection with the case such as certifying the record of the case to the state board of prison commissioners. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

1935. The fact that a judgment of a justice of the peace suspending sentence, was not certified to the state board of prison commissioners, as required by law, does not affect the status of the defendant as to his probation rights. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

1935. Only the state board of prison commissioners can order the incarceration of a convicted defendant whose sentence has been suspended, and then only for a violation of the conditions imposed by the board on probation. This rule applies to conviction in the justice court. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

1935. Under this section a defendant convicted of misdemeanor in either the district or justice court may be placed on probation. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

12080. Effect of suspended sentence.

1935. A provision of a judgment suspending execution of sentence on condition that the defendant leave and remain out of the county held to have no force or effect other than to suspend the sentence; he being thence forward subject to the rules and regulations of the state board of prison commissioners; and, further, that the provision was void as attempted exercise of pardon power which is reposed in the governor and the board of pardons by the constitution, but did not affect the validity of the judgment as to the suspension of sentence or probation. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

1935. The fact that a judgment of a justice of the peace suspending sentence, was not certified to the state board of prison commissioners, as required by law, does not affect the status of the defendant as to his probation rights. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

12081. Blank forms.

1935. In this section the phrase "clerk of courts of each county," using the plural, includes justice courts. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

1935. A justice of the peace on sentencing a defendant and suspending sentence loses jurisdiction of him and cannot thereafter incarcerate him; but the justice may still perform ministerial acts in connection with the case such as certifying the record of the case to the state board of prison commissioners. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

12082. Certificate of judgment, and order for suspension.

1935. A justice of the peace, having no clerk, is duty bound to perform any duty in connection with his court ordinarily performed, or by statute required to be performed, by the clerk, including certification of record to the state board of commissioners where defendant is placed on probation. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

1935. A justice of the peace on sentencing a defendant and suspending sentence loses jurisdiction of him and cannot thereafter incarcerate him; but the justice may still perform ministerial acts in connection with the case such as certifying the record of the case to the state board of prison commissioners. *Ex parte Sheehan*, 100 Mont. 244, 49 P. (2d) 438.

12082.1. Suspended sentence — retention of jurisdiction by court—copy of judgment and order of suspension—mailing to board of prison commissioners and bureau of identification—duty of court clerk. When any judge has suspended a sentence of imprisonment as provided in section 12078 of the revised codes of Montana, 1935, as amended by chapter 184 of the laws of 1937, and has not ordered the prisoner placed under the jurisdiction of the state board of prison commissioners, but has retained jurisdiction with the court, the clerk of said court shall nevertheless mail a full copy of the judgment of the court and the order suspending the sentence and certify the same to the state board of prison commissioners and bureau of identification at the state prison, or if the defendant would have been confined to an institution other than the state prison, then a copy shall be sent to the institution to which said court would have committed the defendant but for the suspending of the sentence. [L. '39, Ch. 40, § 1. Approved February 21, 1939.]

Section 2 repeals conflicting laws.

CHAPTER 89

DISMISSING APPEALS FOR IRREGULARITY—ARGUMENT ON THE APPEAL JUDGMENT UPON APPEAL

12125. Judgment without regard to technical errors.

1939. In a prosecution for driving a motor vehicle "while under the influence of intoxicating liquor," an instruction including the words "or while intoxicated" held erroneous but not reversible error. *State v. Schnell*, Mont., 88 P. (2d) 19.

1937. When the whole record is sufficient to establish the guilt of the defendant, even though there was error, a new trial will not be granted unless it clearly appears that the error complained of actually prejudiced the defendant in his right to a fair trial. *State v. Laughlin*, 105 Mont. 490, 73 P. (2d) 718.

1937. An information charging an attempt to commit rape held not indefinite and uncertain as to the acts charged, in the absence of a demand for a bill of particulars, and the court did not err in proceeding to trial without requiring the prosecution to amend. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. Information charging generally an attempt to commit rape held not demurrable or bad as not charging overt act or not sufficiently charging intent. *State v. Stevens*, 104 Mont. 189, 65 P. (2d) 612.

1937. Where the counsel for the defendant in an action for injuries sustained by guests riding in an automobile belonging to a partner of the defendant partnership, alleged to have been caused by the gross negligence of the defendant's employee driver, remarked in argument that a verdict against the defendant would work irreparable damage to the defendant and practically put it out of business, and the plaintiff's lawyer stated, in reply, that the defendant might be insured, such statement was held not to justify a reversal of judgment for the plaintiff, where the trial judge admonished the jury to disregard the remarks, and the verdict was not excessive. *Doheny v. Coverdale*, 104 Mont. 534, 68 P. (2d) 142.

1935. Evidence elicited on redirect examination which could have been introduced on recalling witness for further examination with permission of court, held not prejudicial. *State v. Simanton*, 100 Mont. 292, 49 P. (2d) 981.

CHAPTER 96A

UNIFORM ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITH- OUT THE STATE IN CRIMINAL CASES

Section

- 12186.1. Definitions.
12186.2. Summoning witness in this state to testify in another state—judge to order hearing—matters to be determined—summons—certificate as evidence—taking witness into custody—mileage and fee—disobedience—punishment.

Section

- 12186.3. Witness from another state summoned to testify in this state—judge to issue certificate—taking witness into custody—mileage and fee—punishment.
12186.4. Exemption from arrest and service of process.
12186.5. Uniformity of interpretation.
12186.6. Short title.

12186.1. Definitions. Witness—as used in this act shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding. The word state shall include any territory of the United States and District of Columbia. [L. '37, Ch. 188, §. 1. Approved and in effect March 18, 1937.

12186.2. Summoning witness in this state to testify in another state—judge to order hearing—matters to be determined—summons—certificate as evidence—taking witness into custody—mileage and fee—disobedience—punishment. If a judge of a court of record in any state, which, by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution, or a grand jury investigation, in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and

delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten (10c) cents a mile for each mile and five dollars (\$5.00) for each day, that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. [L. '37, Ch. 188, § 2. Approved and in effect March 18, 1937.

12186.3. Witness from another state summoned to testify in this state—judge to issue certificate—taking witness into custody—mileage and fee—punishment. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, such judge may direct that such witness be forthwith brought before him; and the judge being satisfied of the desirability of such custody and delivery, for which determination said certificate shall be prima facie proof, may order that said witness be forthwith taken into custody and delivered to an officer of this state, which order shall be sufficient authority to such officer to take such witness into custody and hold him unless and until he may be released by bail, recognizance, or order of the judge issuing the certificate.

If the witness is summoned to attend and testify in this state, he shall be tendered the sum of ten (10c) [cents] a mile for each mile and five dollars (\$5.00) for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. [L. '37, Ch. 188, § 3. Approved and in effect March 18, 1937.

12186.4. Exemption from arrest and service of process. If a person comes into this state in obedience to a summons directing him to attend and testify in this state, he shall not, while in this state pursuant to such summons or order, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons or order to attend and testify in that state or while returning therefrom he shall not, while so passing through this state, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons or order. [L. '37, Ch. 188, § 4. Approved and in effect March 18, 1937.

12186.5. Uniformity of interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it. [L. '37, Ch. 188, § 5. Approved and in effect March 18, 1937.

12186.6. Short title. This act may be cited as "uniform act to secure the attendance of witnesses from without the state in criminal cases". [L. '37, Ch. 188, § 6. Approved and in effect March 18, 1937.

Section 7 repeals inconsistent laws.

Section 8 is partial invalidity saving clause.

CHAPTER 101

DISMISSAL OF ACTIONS FOR WANT OF PROSECUTION OR OTHER REASONS

12223. When action may be dismissed.

1939. Before a defendant who appeals from justice court can avail himself of the guaranty of a speedy

trial he must make proper demand, and cannot rely on section 12223. *State v. Schnell*, Mont., 88 P. (2d) 19.

1939. Section 12223 does not apply to appeals to the district court from the justice court, since their prosecution is by complaint and not by information or indictment, as in the district court. *State v. Schnell*, Mont., 88 P. (2d) 19.

CHAPTER 104A

UNIFORM ACT FOR OUT-OF-STATE PAROLEE SUPERVISION

Section

12266.1. Compact between states authorized—form and provisions—parolee's residence in another state—employment—investigations—visitation and supervision—retaking probationer—waiver of extradition—interstate transportation—rules and regulations—ratification of compact—renunciation.

12266.2. Title of act.

12266.1. Compact between states authorized—form and provisions—parolee's residence in another state—employment—investigations—visitation and supervision—retaking probationer—waiver of extradition—interstate transportation—rules and regulations—ratification of compact—renunciation. The governor of this state is hereby authorized and directed to enter into a compact on behalf of the state of Montana with any of the United States legally joining therein in the form substantially as follows:

A COMPACT. Entered into by and among the contracting states, signatories hereto, with the consent of the congress of the United States of America, granted by an act entitled "An act granting the consent of congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes".

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact, (herein called "sending state") to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, (herein called "receiving state") while on probation or parole, if

(a) Such person, is in fact a resident of or has his family residing within the receiving state and can obtain employment there,

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: Provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying. When ratified it shall have the full force and effect of law within such state, the form of ratification to be in accordance with the laws of the ratifying state.

(7) That this compact shall continue in force and remain binding upon each ratifying state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which ratified it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. [L. '37, Ch. 189, § 1. Approved and in effect March 18, 1937.]

12266.2. Title of act. This act may be cited as the Uniform Act for Out-of-State Parolee Supervision. [L. '37, Ch. 189, § 4. Approved and in effect March 18, 1937.]

Section 2 is partial invalidity saving clause.

Section 3 declares an emergency.

CHAPTER 105

PROCEEDINGS IN BASTARDY

12267. Complaint in bastardy, what to contain, how entitled.

1936. Errors of the trial court in permitting improper cross-examination of the prosecutrix in bastardy proceeding and in the admission of evidence required reversal of a judgment of dismissal where evidence supporting judgment was meager and unconvincing. *State v. Patton*, 102 Mont. 51, 55 P. (2d) 1290.

1936. In bastardy proceedings it is error to admit evidence of the relations of the prosecutrix with men other than the defendant unless it is shown they had opportunity and desire for intimacy. *State v. Patton*, 102 Mont. 51, 55 P. (2d) 1290.

1936. In bastardy proceedings evidence may not be introduced of the relations of the prosecutrix with men other than the defendant at times other than those when the child might have been begotten. *State v. Patton*, 102 Mont. 51, 55 P. (2d) 1290.

1936. Evidence of the reputation of the prosecutrix for chastity is not admissible in bastardy proceedings, as the sole question is as to the parentage of her child. *State v. Patton*, 102 Mont. 51, 55 P. (2d) 1290.

1936. In bastardy proceedings the evidence of meeting or association of prosecutrix with men other than the defendant should be limited to matters and occasions which tend to prove illicit relations between them and prosecutrix. *State v. Patton*, 102 Mont. 51, 55 P. (2d) 1290.

1936. In bastardy proceeding defendant's cross-examination of prosecutrix as to her relations with other men, apparently asked to discredit her in the eyes of the jury, rather than to lay a foundation for impeachment, no impeaching evidence being introduced by him thereafter, held prejudicial though some of the objections thereto were sustained and most of the questions were answered in the negative. *State v. Patton*, 102 Mont. 51, 55 P. (2d) 1290.

CHAPTER 106

PROCEEDINGS AGAINST DELINQUENT CHILDREN AND JUVENILE DELINQUENT PERSONS

Section

12288.

Probation officers—appointment—qualifications — terms — salary — sheriff — reimbursement—salary claims and expenses — deputies — duties — criminal offenses by children — withholding of judgment — custody of child — commitment — fines and penalties — ward of court — copy of order — upon whom served—reports of probation officers—child not to be confined with adult convicts — immediate trial — returning child to home—reports by custodian of child.

12275. Definition of juvenile delinquents.

1938. The events by which the cessation of the parent's custody over his child may be brought about as mentioned in section 5841, are not exclusive, and such cessation may result from estoppel against the parent or waiver of his rights by voluntary surrender of the child's custody and the establishment of new relations permissively. *Haynes v. Fillner*, 106 Mont. 59, 75 P. (2d) 802.

12288. Probation officers — appointment — qualifications — terms — salary — sheriff — reimbursement—salary claims and expenses—deputies—duties—criminal offenses by children —withholding of judgment—custody of child —commitment—fines and penalties—ward of court—copy of order—upon whom served—reports of probation officers—child not to be confined with adult convicts—immediate trial—returning child to home—reports by custodian of child. In every judicial district of the state of Montana the judge thereof having jurisdiction of juvenile matters may appoint one discreet person of good moral character, who shall be known as the chief probation officer of such district and who shall hold his office during the pleasure of the court. Such officer shall receive for his services such sum as shall be specified by the court upon appointment, not exceeding the sum of one thousand eight hundred dollars per annum, to be paid, however, upon a per diem basis for the time actually and necessarily employed in performing the duties of the office. Provided, however, that in counties having a population in excess of 30,000 the district judge having jurisdiction of juvenile matters therein may appoint one chief probation officer for such county, who shall receive for his or her services such sum as shall be specified by the court upon appointment, not exceeding the sum of two hundred dollars per month. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer is appointed to act in proportion to the assessed

valuation of such counties for the year then current to be paid out of the contingent fund of the county; except that where such official is appointed for one county his salary shall be paid by that county. In the absence of the appointment of such chief probation officer, it shall be the duty of the sheriff of the respective county or counties comprising such judicial district to perform all the duties of the chief probation officer in this chapter enumerated without additional compensation. Said probation officer shall also be reimbursed for the actual and reasonable traveling and other expenses incurred by him in pursuance of his official duties. Such reimbursement shall be made once each month by the county or several counties for which such probation officer shall have been appointed. Each probation officer shall, not later than the tenth day of every calendar month, and before the allowance and payment thereof, file or cause to be filed with the proper board of county commissioners of the county chargeable therewith, an itemized sworn statement and account of such expenses, including his claim for salary for the preceding month with the approval of the district judge or judges endorsed thereon. Each county of this state shall reimburse such probation officer only in respect to such expenses as have been incurred in connection with juvenile persons residing in that county.

The district judge having jurisdiction of juvenile matters may also appoint, in counties having a population of more than 30,000, one additional person to serve as deputy probation officer who shall receive not to exceed one hundred fifty dollars (\$150.00) per month and reimbursement for the actual and reasonable traveling and other expenses incurred by him in the pursuance of his official duties and to serve at the will of the court and be paid by the county for which he is appointed out of the same fund heretofore [hereinbefore] set forth. The judge having jurisdiction may appoint as probation officers such other discreet persons of good moral character as are willing to serve without compensation. It shall be the duty of the clerk of the district court, immediately upon the appointment of a probation officer, to notify the courts and magistrates of any county in which the said officer is appointed, giving them the names and postoffice addresses of such officers. The duties of said probation officer or officers shall be, such as hereinafter prescribed.

Whenever a complaint is made or pending against a boy or girl under eighteen years of age for the commission of any offense not punishable by law with life imprisonment, or for which the penalty is death, before any court or magistrate, it shall be the duty of

such court or magistrate at once and before any other proceedings are had in the cause, to give notice in writing of the pendency of said cause to the probation office [officer] of his county. Such probation officer shall immediately, or as soon thereafter as possible, proceed to inquire into and make a full examination and investigation of the facts and circumstances surrounding the commission of the alleged offense, the parentage and surroundings of said child, its exact age, habits, and school record, and everything that will throw light on its life and character, and may also inquire into the home conditions, habits, and character of the parents or guardians, and shall make a full report thereon in writing to the judge of the district court having charge of such cases, before said cause is tried. If, upon consultation with the probation officer and the examination of such report, it shall appear to the judge of said court that the child is not guilty of the offense charged against it, or that the interest of the child shall be best subserved thereby, the court shall order that such child be not brought into court, and said cause shall be dismissed. Said chief probation officer shall attend all hearings under this act and represent the interests of the child and shall take charge of any child before or after trial, as the judge may direct. Probation officers shall serve warrants and other process of the court, issued because of violation of this act or issued for the enforcement of this provision of this act, within or without the county, and in that respect they are hereby clothed with the powers and authority of sheriffs; they can make arrests without warrant upon view of the violation of any of the provisions of this act, and detain the person so arrested pending the issuance of a warrant; and perform such other duties incident to their offices as the judge may direct; and all sheriffs, deputy sheriffs, constables, marshals, and police officers are required to render assistance to probation officers in the performance of their duties when requested to do so.

If upon the trial of any child the court shall find that such child is guilty of the offense charged, he may withhold judgment for a definite or indefinite period if it appears that the public and the interest of the child will be best subserved thereby, and may order that such child be returned to the care of his or her parents, guardian, or friends; or he may commit such child to the care of a volunteer probation officer, who shall exercise supervision over it until such time as it is discharged by the court from supervision upon the recommendation of such voluntary probation officer, and if the parents, parent, guardian, or custodian consent thereto, or if the court shall

further find either that the parent, parents, guardian, or custodian are unfit or improper guardian, or are unable or unwilling to care for, protect, educate, or discipline such child, and shall further find that it is for the best interest of such child and for the people of this state that such child be taken from the custody of its parents, custodian, or guardian, the court may order such child to be placed in the family of some suitable person where such family home shall be recommended by the probation officer of the court after consultation with those representing the interest of the child, there to remain until he or she shall have attained the age of twenty-one years or for any less time, or the court may order such child to be placed in the home where the county's dependent children are kept; or, if it appears to be for the best interest of the child and such child appears to be in need of institutional training, the court may order him or her to be committed to some state institution or some institution of learning managed by a corporation or individual, and devoted to the care of such children, for a definite or indefinite period; such institution to be situated in the state of Montana, and to be inspected at least once a year and approved by the bureau of child and animal protection and to receive for its services a per diem of thirty-five cents for each day that such child shall be in the custody, such per diem to be paid by the county sending the child, upon itemized vouchers duly certified to by the court; or the court may impose a fine with cost, or the court may for good cause shown suspend judgment in any case for a definite or indefinite period; or, if the offense be a malicious trespass, the court may require the damage to be made good, or if the offense be petty larceny and the stolen property is not recovered, the court may require it to be paid by the delinquent child himself if it be shown that he or she is capable of earning the money or has any money of his or her own, or its parents or guardian, at the discretion of the court; and in all the foregoing cases, where the parents or guardian are unfit to have the custody of said child, or unable to control said child, the court may deem the child to be the ward of the court, as far as its person is concerned; and in all cases where any child has been decreed to be the ward of the court, the authority of the court over its person shall continue until the court shall otherwise decree, and the court may adopt all rules and regulations that may be needed to carry out the provisions of this act. In every case in which the court shall commit any child to the care and custody of any other institution as above provided, other than a state institution, and such child shall have a parent or guardian

within the county, the court may make and enter an order requiring such parent or guardian to appear before said court upon a day and hour to be named by the court therein, and show cause, if any she or he have, why she or he should not pay for the support of such child, in whole or in part, while it is an inmate of such institution. A certified copy of said order shall be served upon such parent or guardian by the chief probation officer of the county not less than ten days prior to the day fixed therein for such appearance. Upon due service and return of said order, the court shall, upon the day fixed, or upon such subsequent day as may be fixed by the court, hear evidence as to the financial ability of such parent or guardian, and in case the court shall find that such parent or guardian should pay for or contribute to the support and maintenance of such child, the court shall render judgment against such parent or guardian that that parent or guardian shall pay to the chief probation officer such sums as the court shall adjudge and at such times and in such amounts as shall be by the court found just. And such judgment shall be enforced as other judgments are enforced, and all moneys collected on such judgments shall be held by the chief probation officer and shall be remitted quarterly by him to the institution keeping such child or children and the amount so remitted shall be deducted from the quarterly bill of such institution.

Provided, that the chief probation officer shall make a verified report to the court at the close of each quarter, of the amount of money so collected on such judgments, which report the judge shall cause to be filed with the county commissioners with the bill rendered by the institution keeping such child. If any child is wayward and unmanageable the court may commit him or her to the industrial school, or to any other state penal or reformatory institution authorized by law to receive such boy or girl subject to such conditions as are already provided by law for the reception of such children in said schools or institutions. And in cases where a child shall be committed to a state or other institution as above provided, the report of the probation officer shall be attached to the commitment and the child shall be placed in charge of the probation officer, or some person designated by the court to be conveyed under his direction to the designated institution; provided, that a woman shall always be sent with the girls so committed, and the person taking such child to the designated institution shall be allowed and paid his or her actual expenses and no more, where he or she is a paid officer of such court, appointed by the court, and in all other

cases the person taking such child to any institution shall be allowed and paid for his or her services, the same fees and expenses as are paid to sheriffs in like cases.

And provided, that the court may when the health or condition of the child require it, cause the child to be placed in a public hospital or institution for treatment for special care, or in a private hospital or institution which will receive it for like purposes without charge or for the per diem of thirty-five cents a day.

Provided, that when a child contemplated by this act shall be sentenced to confinement in any institution to which adult convicts are sentenced, it shall be unlawful to confine such child in any room, yard or enclosure with such adult convicts, or to allow them in any manner to come in contact with them, or in any way commingle with such adult convicts, or to bring such child into any yard or room in which adult convicts may be present.

Provided, that if any such boy or girl against whom a petition is filed is unable to give bond, and the court does not release him or her on his or her own recognizance, then such boy or girl shall be entitled to an immediate hearing and trial, according to law.

Providing that the commitment of any child to an institution or association or society shall be subject to the rules and laws that may be in force from time to time governing such institution, association, or society.

Provided, that when it shall be made to appear to the court that the home of the child or its parents, former guardian or custodian, is a suitable place for such child, and that such child be permitted to remain or ordered to be returned to said home, consistent with the public good and the good of such child, the court may enter an order to that effect, returning such child to his home under probation, parole, or otherwise; it being the intention of this act that no child should be taken away or kept out of his home or away from his parents or guardian any longer than is reasonably necessary to preserve the welfare of the child and the interest of all this state; provided, however, that no such order shall be entered without giving ten days' notice to the person, institution, or association to whose care such child has been committed, unless such guardian, institution, or association to whose care such child has been committed consents to such order.

And provided, the court may from time to time cite into court the person, institution, association, or society in whose care any delinquent child has been awarded, and require him or it to make a full, true, and perfect

report as to his or its doings in behalf of such child; and it shall be the duty of such person, institution, or association, within ten days after such citation, to make such report, either in writing, verified by affidavit, or verbally, under oath, in open court or otherwise, as the court shall direct; and upon the hearing of such report, with or without further evidence, the court may, if it sees fit, take such child from said person, institution, association, or society, and place it with another, or restore such child to the custody of its parents or former guardian or custodian. [L. '39, Ch. 101, § 1, amending R. C. M. 1935, § 12288, as amended by L. '37, Ch. 117, § 1. Approved and in effect March 3, 1939.]

Section 2 repeals conflicting laws.

12292. Agreements with certain institutions for support of child.

1938. Where a ten-year old girl had lived with a foster parent for most of her life and had been well provided for and trained, it was held that the trial judge's discretion in awarding her to the foster parent was not abused. *Haynes v. Fillner*, 106 Mont. 59, 75 P. (2d) 802.

1938. Whether an agreement of a parent to surrender a child to another or not, is valid, it is proper to be considered in determining what is for the best interests of the child, and whether the parent has waived his rights to its custody or is estopped from asserting them. *Haynes v. Filner*, 106 Mont. 59, 75 P. (2d) 802.

CHAPTER 111A

UNIFORM CRIMINAL EXTRADITION ACT

Section

- 12428.1. Definitions.
- 12428.2. Fugitives from justice—duty of governor—arrest of fugitives.
- 12428.3. Demand for extradition—form—conviction judgment—copy—indictment—copy.
- 12428.4. Investigation by governor.
- 12428.5. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion—agreement for return—surrender by governor.
- 12428.6. Extradition of persons not present in demanding state at time of commission of crime.
- 12428.7. Issuance of warrant of arrest by governor—recitals therein.
- 12428.8. Execution of warrant—manner and place thereof—delivery of accused.
- 12428.9. Authority of arresting officer.
- 12428.10. Rights of accused person—application for writ of habeas corpus—legal counsel.
- 12428.11. Penalty for non-compliance with preceding section.
- 12428.12. Confinement of accused in jail when necessary—while being transported—new requisition not required.
- 12428.13. Arrest of accused before making of requisition.

Section

- 12428.14. Arrest of accused without warrant therefor.
- 12428.15. Commitment to await requisition—bail.
- 12428.16. Bail—in what cases—conditions of bond.
- 12428.17. Extension of time of commitment adjournment.
- 12428.18. Bail—when forfeited—recovery on bond.
- 12428.19. Persons under criminal prosecution in this state at time of requisition.
- 12428.20. Guilt or innocence of accused—when inquired into.
- 12428.21. Alias warrant of arrest.
- 12428.22. Fugitives from this state—duty of governors—warrant by governor of other state.
- 12428.23. Application for issuance of requisition—by whom made—contents.
- 12428.24. Fugitives from this state—accounts of officer returning them—audit and payment.
- 12428.25. Immunity from service of process in certain civil actions.
- 12428.25a. Written waiver of extradition proceedings—subsequent procedure—voluntary return of accused.
- 12428.25b. Non-waiver by this state.
- 12428.26. No immunity from other criminal prosecutions while in this state.
- 12428.27. Interpretation.
- 12428.30. Short title.

12428.1. Definitions. Where appearing in this act, the term “governor” includes any person performing the functions of governor by authority of the law of this state. The term “executive authority” includes the governor, and any person performing the functions of governor in a state other than this state. The term “state”, referring to a state other than this state, includes any other state or territory organized or unorganized, of the United States of America. [L. '37, Ch. 190, § 1. Approved and in effect March 19, 1937.]

12428.2. Fugitives from justice—duty of governor—arrest of fugitives. Subject to the provisions of this act, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state. [L. '37, Ch. 190, § 2. Approved and in effect March 18, 1937.]

12428.3. Demand for extradition—form—conviction judgment—copy—indictment—copy. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, except in cases arising

under section 6 [12428.6], and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand. [L. '37, Ch. 190, § 3. Approved and in effect March 18, 1937.]

12428.4. Investigation by governor. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered. [L. '37, Ch. 190, § 4. Approved and in effect March 18, 1937.]

12428.5. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion—agreement for return—surrender by governor. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the governor of any other state any person in this state who is charged in the manner provided in section 23 [12428.23] of this act with having violated the laws of the state whose governor is making the demand, even though such person left the demanding state involuntarily. [L. '37, Ch. 190, § 5. Approved and in effect March 18, 1937.]

12428.6. Extradition of persons not present in demanding state at time of commission of crime. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 3 [12428.3] with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom. [L. '37, Ch. 190, § 6. Approved and in effect March 18, 1937.]

12428.7. Issuance of warrant of arrest by governor—recitals therein. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. [L. '37, Ch. 190, § 7. Approved and in effect March 18, 1937.]

12428.8. Execution of warrant—manner and place thereof—delivery of accused. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this act to the duly authorized agent of the demanding state. [L. '37, Ch. 190, § 8. Approved and in effect March 18, 1937.]

12428.9. Authority of arresting officer. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. [L. '37, Ch. 190, § 9. Approved and in effect March 18, 1937.]

12428.10. Rights of accused person—application for writ of habeas corpus—legal counsel. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he

has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state. [L. '37, Ch. 190, § 10. Approved and in effect March 18, 1937.]

12428.11. Penalty for non-compliance with preceding section. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in wilful disobedience to the last section, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than \$1,000.00 or be imprisoned not more than six months, or both. [L. '37, Ch. 190, § 11. Approved and in effect March 18, 1937.]

12428.12. Confinement of accused in jail when necessary—while being transported—new requisition not required. The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person, however, being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the

executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state. [L. '37, Ch. 190, § 12. Approved and in effect March 18, 1937.]

12428.13. Arrest of accused before making of requisition. Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and, except in cases arising under section 6 [12428.6] with having fled from justice, or, with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 6 [12428.6], has fled from justice, or with having been convicted of a crime in that state and having escaped from bail, probation or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. [L. '37, Ch. 190, § 13. Approved and in effect March 18, 1937.]

12428.14. Arrest of accused without warrant therefor. The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant. [L. '37, Ch. 190, § 14. Approved and in effect March 18, 1937.]

12428.15. Commitment to await requisition—bail. If from the examination before the judge or magistrate it appears that the person

held is the person charged with having committed the crime alleged, and, except in cases arising under section 6 [12428.6], that he has fled from justice, the judge or magistrate must by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged. [L. '37, Ch. 190, § 15. Approved and in effect March 18, 1937.]

12428.16. Bail—in what cases—conditions of bond. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the governor of this state. [L. '37, Ch. 190, § 16. Approved and in effect March 18, 1937.]

12428.17. Extension of time of commitment adjournment. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge him or may recommit him for a further period of sixty (60) days, or a supreme court justice or county judge may again take bail for his appearance and surrender, as provided in section 16 [12428.16], but within a period not to exceed sixty (60) days after the date of such new bond or undertaking. [L. '37, Ch. 190, § 17. Approved and in effect March 18, 1937.]

12428.18. Bail—when forfeited—recovery on bond. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state. [L. '37, Ch. 190, § 18. Approved and in effect March 18, 1937.]

12428.19. Persons under criminal prosecution in this state at time of requisition. If a criminal prosecution has been instituted

against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state. [L. '37, Ch. 190, § 19. Approved and in effect March 18, 1937.

12428.20. Guilt or innocence of accused—when inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime. [L. '37, Ch. 190, § 20. Approved and in effect March 18, 1937.

12428.21. Alias warrant of arrest. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. [L. '37, Ch. 190, § 21. Approved and in effect March 18, 1937.

12428.22. Fugitives from this state—duty of governors—warrant by governor of other state. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the chief executive of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed. [L. '37, Ch. 190, § 22. Approved and in effect March 18, 1937.

12428.23. Application for issuance of requisition—by whom made—contents. I. When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the

accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

II. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition. [L. '37, Ch. 190, § 23. Approved and in effect March 18, 1937.

12428.24. Fugitives from this state—accounts of officer returning them—audit and payment. When the governor of this state, in the exercise of the authority conferred by section 2, article IV, of the constitution of the United States, or by the laws of this state, demands from the executive authority of any state of the United States, or of any foreign government, the surrender to the authorities of this state of a fugitive from justice, who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners, and paid out of the state treasury. [L. '37, Ch. 190, § 24. Approved and in effect March 18, 1937.

12428.25. Immunity from service of process in certain civil actions. A person brought into this state on, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited. [L. '37, Ch. 190, § 25. Approved and in effect March 18, 1937.]

12428.25a. Written waiver of extradition proceedings—subsequent procedure—voluntary return of accused. Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 7 and 8 [12428.7-12428.8] and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 10 [12428.10].

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state. [L. '37, Ch. 190, § 25a. Approved and in effect March 18, 1937.]

12428.25b. Non-waiver by this state. Nothing in this act contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial,

a sentence or punishment for any crime committed within this state, nor shall any proceedings had under this act which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever. [L. '37, Ch. 190, § 25b. Approved and in effect March 18, 1937.]

12428.26. No immunity from other criminal prosecutions while in this state. After a person has been brought back to this state by extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition. [L. '37, Ch. 190, § 26. Approved and in effect March 18, 1937.]

12428.27. Interpretation. The provisions of this act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it. [L. '37, Ch. 190, § 27. Approved and in effect March 18, 1937.]

12428.30. Short title. This act may be cited as the Uniform Criminal Extradition Act. [L. '37, Ch. 190, § 30. Approved and in effect March 18, 1937.]

Section 28 is partial invalidity saving clause.

Section 29 repeals inconsistent laws.

CHAPTER 115

THE STATE PRISON

12440.2. Trust fund for prison band.

1936. Where a sum of money was deposited in a bank with direction to pay the interest over to trustees for the use of others, the bank was held a trustee of the deposit and the trustees only trustees of the interest. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585, holding, also, that the bank's trust was not terminated by the bank's failure, and that the fund should be paid over to such trustee as the court should appoint, as a preferred claim in liquidation of the bank. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

12440.6. Report of trustee—supervision of trust fund by court.

1936. Where a sum of money was deposited in a bank with direction to pay the interest over to trustees for the use of others, the bank was held a trustee of the deposit and the trustees only trustees of the interest. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585, holding, also, that the bank's trust was not terminated by the bank's failure, and that the fund should be paid over to such trustee as the court should appoint, as a preferred claim in liquidation of the bank. *Conley v. Johnson*, 101 Mont. 376, 54 P. (2d) 585.

CHAPTER 119

STATE VOCATIONAL SCHOOL FOR GIRLS

Section	
12543.	Rescuing inmates or permitting escapes—punishment.
12543.1.	Assisting inmate to escape—punishment.
12543.2.	Repeals.

12543. Rescuing inmates or permitting escapes — punishment. Every person who rescues or attempts to rescue, or aids any other person in rescuing, or attempting to rescue, any inmate of, in or from the vocational school for girls, or from any person or officer having her in lawful custody, or who shall contrive, procure, connive at, or otherwise voluntarily aid in or suffer the escape of any inmate of, in or from said school, shall, on conviction thereof, be punished by imprisonment in the state prison for a period of not less than six (6) months nor more than two

(2) years, or be fined in a sum not exceeding one thousand dollars (\$1000.00), or by both such fine and imprisonment. [L. '37, Ch. 196, § 1, amending R. C. M. 1935, § 12543. Approved and in effect March 18, 1937.]

12543.1. Assisting inmate to escape — punishment. Every person who wilfully assists any inmate committed to or confined in such school or in the lawful custody of any officer or person to escape, or in an attempt to escape from such school or custody, is punishable as provided in the preceding section. [L. '37, Ch. 196, § 2. Approved and in effect March 18, 1937.]

12543.2. Repeals. All parts of section 12543 of the revised codes of Montana of 1935 in conflict herewith are hereby repealed. [L. '37, Ch. 196, § 3. Approved and in effect March 18, 1937.]

INDEX

PREFATORY NOTE

The following index was compiled by Henry C. Allen. The **black-face** cross-references refer to the **black-face topics** in the index, rather than to chapter headings of the statutes, though these may sometimes correspond.

A

Abandonment of Counties, 4426.1—4426.23

Adverse vote in county to which territory was to be attached, effect, 4426.9

Assessor of abandoned county
assist assessor of consolidated county in assessing property of abandoned county, 4426.19

deliver assessment lists and all documents relating to assessment of property, 4426.19

Attachment of territory to another county, 4426.1
petition for, 4426.3

county clerk check signatures, 4426.3

hearing on, 4426.3

signers not allowed to withdraw, 4426.3

Bond district

bonds issued by

conditions of, 4426.16

to pay warrants, 4426.16

created when funds insufficient to pay warrants of abandoned county, 4426.16

officers of, 4426.16

Bond funds to remain intact, 4426.16

Bonds of abandoned county, 4426.16

Claims against abandoned county

payable by county to which attached, 4426.15
limitation, 4426.15

Constables hold office unless township is divided, 4426.10

Contracts of abandoned county, 4426.14

effect of abandonment upon, 4426.9

printing, 4426.14

County clerk

check signatures on petition, 4426.2

may employ additional help, 4426.2

County commissioners fix date for hearing on petition, 4426.3

County high schools abandoned, 4426.23

funds, 4426.23

transfer of, 4426.23

unpaid taxes, application of, 4426.23

Election, 4426.2

abstract of canvass sent to secretary of state, 4426.8

adverse vote in county to which territory was to be attached, effect, 4426.9

Abandonment of Counties—Continued

Election—continued

call for, 4426.5

conduct of, 4426.7

county commissioners' duty, 4426.6

form of questions to be submitted, 4426.7

governor, duty of, 4426.8

proclaim results, 4426.8

notice of, as required by general election laws, 4426.6

procedure when vote favorable, 4426.9

proclamation of governor calling and fixing date of, 4426.5

copies sent to county clerks, 4426.5

filed in office of secretary of state, 4426.5

questions to be submitted, form of, 4426.7

registration, 4426.6

returns, 4426.8

canvassed by county commissioners, 4426.8

copy of state canvass sent to governor, 4426.8

state canvassing board to canvass, 4426.8

vote favorable

procedure, 4426.9

termination of officers' terms, 4426.9

Funds of abandoned county, 4426.16

fund balances and accruing moneys in abandoned districts, 4426.17

disposition of, 4426.17

insufficient to pay warrants of abandoned county, 4426.16

warrant, district created, 4426.16

transferred to designated county, 4426.16

how kept and used, 4426.16

Governor

call and fix date of election, 4426.5

issue proclamation on results of election, 4426.8

Indebtedness of adjoining county, procedure for paying 4426.18

Intention of act as to indebtedness, 4426.21

Justices of peace continue to hold office unless township divided, 4426.10

Liens, rights and claims of abandoned county vest in county to which attached, 4426.12

Officers, termination of terms if vote favorable, 4426.9

Abandonment of Counties—Continued

- Petition for, 4426.2
 - contents, 4426.2
 - contracts not to be executed after filing of, 4426.14
 - county clerk to check signatures, 4426.2
 - hearing on, 4426.3
 - form of resolution of commissioners, 4426.4
 - notice of to be published, 4426.3
 - order fixing date of, 4426.3
 - resolution of commissioners, form of, 4426.4
 - signers may not withdraw, 4426.2
 - sufficiency of determined by county commissioners, 4426.4
- Procedure for abandonment, Const. Art. XVI, § 8
- Proclamation of governor calling and fixing date of election, 4426.5
- Property of abandoned county
 - becomes property of county to which attached, 4426.11
 - may be used, sold or otherwise disposed of, 4426.20
 - appraised before sale, 4426.20
 - not to be taxed for existing indebtedness of county to which attached, 4426.18
 - procedure, 4426.20
- Records of county abandoned
 - go to county to which attached, 4426.13
 - transcripts of, where portions of county go to two adjoining counties, 4426.13
 - unrecorded instruments, 4426.13
- School districts, 4426.22
 - conflicting numbers to be changed, 4426.22
 - continue to exist, 4426.22
 - funds, 4426.22
 - officers continue to serve, 4426.22
- Special districts, 4426.22
 - continue to exist, 4426.22
 - funds, 4426.22
- Tax levies in bond or warrant district, 4426.16
- Townships
 - divided, effect of, 4426.10
 - remain in existence until changed by commissioners of county to which attached, 4426.10
- Warrant district
 - created when funds insufficient to pay outstanding warrants of abandoned county, 4426.16
 - tax levy on lands within district to pay, 4426.16
- Abatement of nuisance, sale of liquor, 2815.106a
- Absent voter's ballot, 562
- Abstract of operating records of drivers, 1754.16
- Abstract of votes, 654

Abstractors, TitleSee **Regulation of**

Academy teachers, exempt from jury duty, 8893

AccidentSee **Coroners****Accident Reports**See **Cities**

Accident reports confidential, 1754.40

Accidents

- Analysis of reports, 1754.41
- Coroner's report, 1754.38
- Damage to vehicles, duty to stop, 1754.30
- Driver unable to report, 1754.36
- Duty to
 - give information, 1754.31
 - render aid, 1754.31
 - report, 1754.34
 - stop, 1754.29
- Duty upon striking unattended vehicle, 1754.32
- Failure to stop
 - misdemeanor, 1754.30
 - penalty, 1754.29
 - revocation of license, 1754.29
- Garages to report, 1754.39
- Involving death or personal injuries, 1754.29
- Report of, 1754.34
 - by whom, 1754.35
 - by witnesses, 1754.35
 - confidential, 1754.40
 - coroner, 1754.34
 - coroners, 1754.38
 - forms, 1754.37
 - immediate, 1754.34
 - to supervisor, 1754.35
 - when made, 1754.35
 - written, within twenty-four hours, when, 1754.35
- Law enforcement officer's report, 1754.35
- Motor vehicle, 1754.29—1754.42
- Municipalities may require reports, 1754.42
- Non-residents, 1760.12
- Occupant of vehicle to report, when, 1754.36
- Striking
 - fixtures on highway, 1754.33
 - unattended vehicle, 1754.32
- Supervisor to tabulate and analyze reports, 1754.41
- Supplemental reports, 1754.35
- Tabulation of accident reports, 1754.41
- Uniform accident reporting act, short title, 1754.44
- Written report of, 1754.35

Account, blind, 349A.65

AccountingSee **Public Accounting****Accounts**See **Cemetery Associations**

Commission for the Blind

- Accounts, state department of public welfare, 349A.81
- Accounts and records, old age assistance, 439A.46e
- Accumulated contributions, definition of, retirement system, teachers, 1132.1

Acknowledgment and Proof of Instruments,

6910—6915

Corporations, 6910

form of acknowledgment, 6915

Officer taking acknowledgment to know person, 6910

Acknowledgment of instruments, 6893

Acknowledgments, rural electric associations, 6396.25

- Acquisition of forests, 1842.4
- Acquisition of state parks, 1842.4
- Action on bond, motor vehicle act, 1754.15
- Actions**
 - See **Civil Actions**
 - Limitations of**
 - Manner of commencing, 9111
 - To quiet title to tax deed property, 2215.2
- Actuarial equivalent, definition of, retirement system, teachers, 1132.1
- Actuary, designation of, 1132.3
- Added eggs, definition of, 2634.6
- Adherent yolk, definition of, 2634.6
- Adjustment, Board of**
 - See **Soil Conservation Districts**
- Adjutant general, bond of, 464
- Admeasurement of water, water commissioners, 7136
- Administrators**
 - See **Executors and Administrators**
 - Public Administrator**
 - Non-resident aliens, 7090.3
 - Oath, 10088—10106.3
 - Partner not to administer, 10068
 - Persons entitled to letters, 10068
 - Public administrator, 10000, 10018
 - Transfer of title to motor vehicle by, 1758.2
- Administrators and Executors**
 - Bonds**
 - additional bonds, 10106.1
 - excessive, 10106.1
 - form, 10088
 - new bond, liability of former surety, 10106.3
 - order for reduction of, 10106.2
 - reduction, 10106.1
 - sureties, 10088
 - when dispensed with, 10096
 - Claims, rejection of, 10178
 - Conveyance of real property by, 10269, 10279.9
 - Curative deeds, 10279.9
 - Sale of personal property, 10204
 - Validation of sales by, 10279.9
- Adult education, use of school rooms, 1015(23)
- Adulterated foods, sale of, 2599.12
- Aeronautics**
 - See **Uniform Aeronautics Act**
- Aeroplanes, 2736.7
- Affidavit for service by publication, 9488.1
- Affidavit of**
 - Copyrights, filing of, 6815.2
 - Exemption, jury duty, 8895
 - Insanity, 1431
- Aged Persons**
 - See **Assistance**
- Agencies**
 - See **Federal Agencies, Cooperation with**
- Agencies of the federal government, mortgage act not applicable, 9444.11
- Agreement, definition of, 349B.1
- Agreements**
 - Rural rehabilitation projects
 - filed with county clerk and county treasurer, 349B.10
 - deposit of funds, 349B.14
 - names of political subdivision, 349B.9
- Agricultural Conservation Act**
 - See **Montana Agricultural Conservation Act**
- Agricultural Conservation Board**
 - See **Montana Agricultural Conservation Act**
- Agricultural lands, state, leasing of, 1805.21—1805.32
- Agricultural organizations, corporation license tax
 - exemptions, 2296
- Agricultural products, unfair practices act, 10915.5a
- Agricultural seeds, 3594
- Agricultural societies, incorporation of, 6453
- Agriculture**
 - See **Commissioner of**
 - Department of Agriculture**
- Aid, duty to give, accidents, 1754.31
- Aid to Blind**
 - See **Blind**
 - Change of Residence**
 - Public Welfare**
- Aid to needy blind individuals, public welfare act, 349A.56—349A.68
- Aid to needy dependent children, public welfare act, 349A.47—349A.55
- Aircraft, 2736.7
- Aircraft, gasoline tax refund, 2396.4
- Air Circulation**
 - See **Coal Mining Regulations**
- Airplanes, 2736.7
- Airports**
 - See **Highway Commission**
 - Municipal Airports**
 - Public Airports**
 - Highway department, cooperation with, 1800.2
- Alcoholic Content**
 - See **Beer**
- Ale, sale of, 2815.13
- Alias summons, justice courts, 9633
- Allowance on superannuation retirement, retirement system, teachers', 1132.6
- Alms house employees, exempt from jury duty, 8893
- Amendments to pleadings, time for, 9192
- Amortization contract, sale of state lands under, 1805.88b
- Animals, wild predatory, bounty for killing, 3417.17
- Animal unit, definition of, 7364.29-2
- Annual Meeting**
 - See **Banks and Banking**
- Annual meeting, rural electric association, 6396.8
- Annual return, public administrator, 10000

AnnuitiesSee **Children**

Annuity, definition of, retirement system, teachers, 1132.1

Annuity reserve, definition of, retirement system, teachers, 1132.1

Annuity reserve fund, 1132.8

Annuities savings fund, 1132.8

Answer, 9127

Demurrer to, 9127

Justice courts, 9632

Time to plead, 9192

Anticipatory warrants, emergency relief fund, 335.17-3

Apothecaries, weights and measures to be tested and sealed, 4249

Appeals

From finding of unemployment commission, 3033.6

To state board of equalization, 2122.9

Apples, grades of, sale, permissible variation, 4265.1

Applications for

Assistance, 349A.38

aid to blind, 349A.58, 349A.60

dependent children

by whom made, 349A.50

contents of, 349A.50

one application for several, 349A.50

Lease of state lands, 1805.51-6

Old age relief, investigation of, 349A.40

Recount of votes, 828.1

Registration of motor vehicles, 1759

Appointment of

Deputy registrars, 557

Guardian, blind person, 349A.68

Judges of election, 587

Marshal of the supreme court, 367

Apportionment of

Proceeds of sale, unredeemed property, 2235

Railroad assessments, record of, 2136

ApprenticesSee **Barbers and Barber Shops**

Appropriation of proceeds of state highway treasury anticipation debentures, 2381.4f

Appropriation of Water Rights, 7097.1—7135.9

Diversion of water, 7097.1

Interstate compacts, 7135.1

Interstate streams, 7135.1

Policy, 7135.1

Water adjudication suits, 7135.2

Appropriations

For public welfare purposes, 349A.79

General fund, retirement system, teachers', 1132.8

Archaeological resources, state park commission to preserve, 1871.4

Archaeological Sites, 1575.5

Permits to examine and excavate, 1575.5

Specimens, disposition of, 1575.5

Architect, compensation of, 1444i

Arithmetic, course of study, 1054

Armory Board

See **Militia, 1400.1—1400.6**

Appointed by the governor, 1400.1

Arrest

See **Criminal Law**

Weights and Measures

By highway patrolmen, 1741.10

Motor vehicle act, 1754.12

Arson, highway patrolmen to arrest when, 1741.9

Art, course of study, 1054

Articles, Amendment

See **Banks and Banking**

Articles of amendment, corporation chartered, filing of, 6396.19

Articles of Corporate Consolidation

Filing of, 6396.19

Rural electric cooperative act, 6396.13

Articles of Corporate Conversion

Filing of, 6396.19

Rural electric cooperative act, 6396.16

Articles of Corporate Dissolution

Filing of, 6396.19

Rural electric associations, 6396.18

Articles of Incorporation

Filing of, 6396.19

Rural electric associations, 6396.6

Articles of Incorporation, Amendment

See **Corporations**

Articles of merger, filing of, 6396.19

Ashes, restrictions on, forest areas, 1840.17

Assault, 10980

Assembly Journals

See **Secretary of State**

Assessment of Telegraph, Telephone, Electric Power Lines

See **Taxation**

Assessment of

Electric power lines, 2138—2146

Improvements, when made, 2002

Property, 2001.1—2002

duties and liabilities of assessor, 2001.1—2002

percentage basis, 2001.1

tax certificate issued, 2231

Railroads, 2132—2137

duties of county assessor, 2133

hearing, 2132

how made, 2132

notice of hearing, 2132

record of, 2136

Real property, when made, 2002

Telegraph lines, 2138—2146

Telephone lines, 2138—2146

Assessments

See **Building and Loan Associations**
Taxation

Assessments, when made, 2002

Assessor

See **Abandonment of Counties**

Duties and liabilities of, in assessing property,
2001.1—2002

Motor vehicles, assessment of, 2002

Report to county treasurer, 2238

Assignment

Lease of state lands, 1805.32, 1805.51-13

sureties required, 1805.51-13

Teachers' retirement benefit exempt from, 1132.13

Assistance

See **Application for**

Application for

aid to blind, 349A.60

dependent children, 349A.50

needy blind, 349A.58

Cancellation of, 349A.43

aid to blind, 349A.67

Eligibility for, dependent children, 349A.49

Granting of, 349A.33

Grants, periodic review of, 349A.44

Assistant chief clerk of the state treasurer, bond of,
464

Assistant Law Librarian

Duties, 1569

Salary, 1569

Assistant registrar of state land office, bond of, 464

Assistant superintendent of banks, bond of, 464

Assistants to Civil Executives

See **Board of Examiners**

Association, milk control act, definition, 2640.3

Associations

See **Cemetery Associations**

Cemetery, incorporation, 6479—6502

Corporation license tax, 2296

Dairymen's, 2640.18

Asylums for the Insane, 1431—1444i

Employees, exempt from jury duty, 8893

Attachment, 9262.1, 9262.2

Additional method, 9262.1

Corporate stock, 9262.1

Service upon secretary of state when, 9262.1

Attachment of Territory

See **Abandonment of Counties**

Attendance

At vocational training centers, 1262.99d

Of school out of state, 1010A

Of school outside of district, 1013

Attorney

See **Power of Attorney**

Attorney General

Action to collect coal mine license tax, 2323

Advisor to retirement board, 1132.3

Bond of, 464

Cooperation with state temperance commission,
2815.210

Defend board of barber examiners on appeals,
3228.21

Determine validity of bond issue proceedings,
5668.13a

Duties under soil conservation act, 3649.24

Legal advisor of industrial accident board, 2835

Montana state board of food distributors, attorney
for, 2599.15

Prosecute violations of unemployment compensation
act, 3033.17

To abate liquor nuisances, 2815-106b

To represent milk control board, 2640.24

Attorneys

Exempt from jury duty, 8893

Under unemployment compensation act, 3033.6

Auction

See **Public Auction**

Auctions, personal property of estate, 10204

Audit

See **State Examiner**

Auditor, bond of, 464

Automobiles, 1754.11—1754.26

Driver's license, 1741.11

Improper driving of, 1741.7

Speed and traffic regulations, 1742.1—1754.6

Speed regulations, 1742.1

Average final compensation, definition of, retirement
system, teachers, 1132.1

Aviation, 2736.7

Axel loading, 1751.4

B

Bail, arrest under motor vehicle act, 1754.12

Ballot boxes, return of, 782

Ballots

See **Initiative and Referendum**

Color and size, 681

Constitutional amendments, 681

County and township offices, 681

Drawal of, box No. 3, 9341

Form of, 681

Insane asylum bonds, 1444h

Local option, 2815.195

Names and party of candidates to be printed
thereon, 681

Names

order of, 681

pasting names of candidates on, 678

rotation of, 681

writing names of candidates on, 678

Political designation of candidates, 681

Preparation of, 678

Ballots—Continued

- Printed, 678
- Referendum, 2155b
- Size and color, 681
- State and national offices, 681
- Township and county offices, 681
- Bank account, state department of public welfare, 349A.81

Bank Deposit Insurance

See **Federal Deposit Insurance Corporation**

Bank examiner, bond of, 464

Bankruptcy

- Cities and towns may avail themselves of federal act, 5278.31
- Irrigation districts, 7264.14a
- Bankruptcy court, transfer of title to motor vehicle by, 1758.2

Banks and Banking, 6014.23—6018.2

- Annual meeting, 6014.23
- Amendment of articles
 - certificate of proceedings, 6014.23
 - approval of superintendent of banks required, 6014.23
 - filed with superintendent of banks, **6014.23**
- changing number of directors, 6014.23
- special meeting of stockholders for, **6014.23**
- notice of, 6014.23
- two thirds of outstanding stock required, 6014.23
- Directors, changing number of, 6014.23
- Financial institutions
 - approved as mortgagee by federal housing administrator, 6018.1
 - may make loans on real estate insured or agreed to be insured by federal housing administrator, 6018.1
 - not restricted by other laws limiting loans, etc., 6018.1
- Insurance
 - see federal deposit insurance corporation, 6018.3—6018.8
 - financial institutions authorized to obtain, 6018.1
- Meetings, notice of special meetings of stockholders, 6014.23
- Safe deposit boxes and vaults, 6014.39-1
 - joint tenancy
 - access to, right of passes to survivor, 6014.39-1
 - survivor, rights in pass to, 6014.39-1
 - when, 6014.39-1
- Banks, authorized to invest in home owners' loan corporation bonds, 5309.35

Barber Shops

See **Barbers and Barber Shops**

Barbers and Barber Shops

- Appeals to court from decisions of board, 3228.21
- attorney general defend board, 3228.21
- Apprentice, 3228.21
 - definition of, 3228.21
 - statement filed with board of examiners, 3228.21

Barbers and Barber Shops—Continued

- Barbering defined, 3228.20
- Barbering without certificate of registration, 3228.30
- Board of barber examiners, 3228.27
 - creation of, 3228.27
 - issue certificates of registration, 3228.27
 - make rules and regulations, 3228.19, 27
 - minimum prices fixed by, 3228.27
 - powers and duties, 3228.27
 - price agreements, approved by board, 3228.27
- Certificate of registration
 - barbering without, 3228.30
 - issued by board, 3228.27
- Definition of "barber shop," 3228.19
- Display of certificate or license, 3228.23
- District courts, jurisdiction of appeals, 3228.21
- Examinations of applicants, 3228.27
- Fees, 3228.29
- Fees for license, examination, etc., 3228.21
- License, 3228.21
 - appeals to court from decisions of board, 3228.21
 - application for, 3228.21
 - contents, 3228.21
 - apprentice, 3228.21
 - fee, 3228.21
 - statement filed with board of examiners, 3228.21
- barbers, 3228.21
- barber shops, 3228.21
- board may refuse to issue, revoke or suspend, 3228.21
 - grounds for, 3228.21
- colleges, 3228.21
 - revocation of, grounds for, 3228.21
- display of, 3228.23
- fee, 3228.21, 3228.29
- operating without, 3228.30
- physically handicapped trained by civilian rehabilitation, 3228.29
- present practitioners, 3228.22
- renewal, fee, 3228.29
- schools, 3228.21
 - qualifications, 3228.21
 - revocation of, grounds for, 3228.21
- shops, 3228.21
 - equipment required, 3228.21
 - operating without license, 3228.30
 - revocation, grounds for, 3228.21
- shops, schools and colleges previously established, 3228.22
 - qualifications of applicants for, 3228.21
- Physician's certificate required of applicants, 3228.19
- Practicing barbering defined, 3228.20
- Present practitioners, 3228.22
 - examination waived, 3228.22
 - furnish physicians certificate, 3228.22
- Rules and regulations, who makes, 3228.19
- Sanitation, 3228.19
- School, operating without license, 3228.30

Barbers and Barber Shops—Continued

- Schools and colleges, equipment required, 3228.21
- Violations of act, 3228.28
 - penalties, 3228.28
 - suspension or revocation of license, 3228.28

Basis for taxation, 1999, 2000.4

Beaver doing damage, transfer of, 7364.29-30

Beds of navigable streams, leasing of, 1805.51-2

Beer

- Administration of beer act, 2815.12
- Alcoholic content of, 2815.13
- Brewers, failure to make return, 2815.25a
- Brought into state, returns, 2815.25b
- Definition of, 2815.11
- Tax
 - failure to pay, 2815.25
 - lien on beer, 2815.25a
- Wholesalers, failure to file statement, 2815.25

Beer Act

See **Montana Beer Act**

Beneficiaries, re-examination of, 1132.6

Beneficiary, definition of, retirement system, teachers, 1132.1

Benefits

See **Fraternal Benefit**

Unemployment Compensation

- Old age, 3033.5
- Payment of, under unemployment compensation law, 3033.3
- Retirement system, teachers', 1132.6

Benevolent associations, incorporation of, 6453

Benevolent corporations, incorporation of, 6453

Bicycle improperly lighted, 1741.7

Bigamy

See **Crimes**

Black rot, eggs, definition of, 2634.6

Blind

See **State Commission for the Blind**, 1473.5—1473.15

- Aid to, 349A.56—349A.68

- Rehabilitation of, 1473.15

- School for, 1473.1—1473.4

- cooperation with commission for the blind, 1473.12

- State commission for, 1473.5—1473.15

Blind Aid

See **Change of Residence**

Public Welfare**Blind, Aid to Needy**

See **Aid to Blind**, 349A.56—349A.68

Blind Commission

See **Cooperation**

Blind curves, passing on, 1741.7

Blind individuals, public welfare act, 349A.74

Blind industries, accounts of, 1473.13

Blindness

- Definition of, 1473.11

- Prevention of, 349A.57

Blind Persons

See **Commission for the Blind**

Blind persons, vocational adjustment of, 349A.57

Blind School

See **Montana School for Deaf and Blind**

Blood ring, eggs, definition of, 2634.6

Blood spot, eggs, definition of, 2634.6

Bloody white, eggs, definition of, 2634.6

Blue Sky Laws

See **Regulation of Stock Brokers, Etc.**, 4028

Board, Definition of, 349A.6

- Montana beer act, 2815.11

- Rural rehabilitation, 349B.1

Board of Barber Examiners

See **Attorney General**

Barbers and Barber Shops**Board of County Commissioners**

See **County Commissioners**

- Bonds, fix form of, 1262.14

- County lands

- exchange of, 2208.1

- lease of, 2208.1

- sale of, 2208.1

- Funeral expenses paid from county poor fund, 349A.41

- General relief, primary duty of, 349A.28

- Judges of election, commissioners to appoint, 587

- Rural rehabilitation projects, request for

- funds, 349B.7

- State parks, acquisition of, 1842.4

- Taxes, refund of, 2222

Board of equalization, rural rehabilitation

- projects, 349B.2

Board of Examiners

See **Chiropody**

- Assistants to civil executives already in office, 273.3

- approval of governor, 273.3

- discharge, 273.3

- removal, 273.3

- Boards of state institutions not to exceed income, 269a

- Capitol refunding bonds, 283.2

- board of examiners may issue, 283.2

- expenses for issuance, 283.7

- appropriation for, 283.7

- budget act not controlling, 283.8

- interest rate, 283.3

- registration of, 283.6

- sale of, 283.5

- taxes to be levied for payment, 283.4

- Complaints by taxpayer, 269d

- Deductions from new appropriations, 269c

- Deficiency bill, 269b

Board of Examiners—Continued

- Emergency expenditures in excess of
 - appropriation, 269b
 - deficiency bill, 269b
 - limitations on, 269b
 - permission of board of examiners for, 269b
 - procedure, 269b
 - report to legislature by board, 269b

- Employment of assistants to civil executive officers, 273.1
- appointment, 273.1
- governor's approval of, 273.1, 273.3
- removal of assistants, 273.2
- power of governor, 273.2
- procedure, 273.2

- Expenses of office, 273.1

- Foresters' cooperative work fund, control over, 1840.23

- Insane asylum bonds, disposal of, 1444e

- Inventory of stocks, supplies and materials to be made yearly, 269c

- Limitations on emergency expenditures, 269b

- Penalty for violations, 269d

- Powers and duties, 269a

- employment of assistants to civil executive officers, 273.1

- Repeals, 273.4

- Removal of assistants, procedure, 273.2

- Report to legislature, deficiency bill, 269b

- State institutions

- income, board not to expend in excess of, 269a

- inventory of stocks and supplies taken yearly, 269c

- by board of examiners, 269c

- deducted from appropriation prohibited, 269c

- Tuberculosis sanatorium, powers over, 1525.5

- Violation of act

- complaint by taxpayer, 269d

- misdemeanor, 269d

- Board of health, child welfare division, 349A.71

Board of Food Distributors

- Definitions, 2599.1

- Personnel, 2599.2

- Board of forest protection, 1840.22

- Board of forestry, 1840.1—1842

Board of Land Commissioners

- See **State Board of Land Commissioners**

- Board of milk control, 2639.1—2640.26

- Board of Montana state armory, 1400.1

- Board of school trustees, meeting to consider election, 1224.10

Boards of State Institutions

- See **Board of Examiners**

- Board of state water conservation, 349.5

- Board of trade, corporation license tax exemptions, 2296

Board of Trustees

- High schools, 1262.83

- public works undertaken, 1301.1

- Law library, 1556

- Rural electric association, 6396.9

- School district, budget meeting of, 1263.5

- Boards, public works emergency relief act, 3033.27

- Bond clerk, state treasurer, bond of, 464

Bond Districts

- See **Abandonment of Counties**

Bonds

- See **Abandonment of Counties**

- Board of County Commissioners**

- Capitol Refunding Bonds**

- Clerk of the Supreme Court**

- County Finances, Bonds, and Warrants**

- High School Bonds**

- Municipal Bonds and Indebtedness**

- Validity of Bonds**

- Cancellation of by registrar of motor vehicles, 1754.19

- Capitol building and refunding, 283.2—283.8

- County officers, 466

- assessors, 466

- attorneys, 466

- auditors, 466

- clerks, 466

- clerks of the district court, 466

- commissioners, 466

- coroners, 466

- deputy drain commissioners, 466

- drain commissioners, 466

- librarians, 466

- meat and milk inspectors, 466

- public administrators, 466

- sheriffs, 466

- special drain commissioners, 466

- superintendents of schools, 466

- surveyors, 466

- treasurers, 466

- Executors and administrators, 10088—10106.3

- High school, 1262.14

- form of, 1262.14

- Insane asylum

- disposition of, 1444e

- form of, 1444d

- insuance of, 1444a

- tax levied for payment, 1444g

- Junior colleges, 930.11

- Mining leases, state lands, 1805.51-7

- Motor vehicle act, 1754.15

- Secretary, retirement board, 1132.3

- School

- amortization bonds

- definition of, 1224.3

- issued when, 1224.3

- authorization of bond issue, 1224.14

- board to pass on, 1224.6

- election

- ballots, preparation of, 1224.11

Bonds—Continued**School—continued****election—continued**

calling of, 1224.10

petition calling for election, 1224.10

judges of, 1224.10

notice of, 1224.10

form of, 1224.10

posting of notice, 1224.10

percentage of electors for issuance, 1224.14

forms, 1224.3

interest, 1224.4

issuance of, 1224.6

without election, 1224.6

limitation of term of bonds, 1224.4

redemption, 1224.4

sale

form of notice, 1224.16

notice by publication, 1224.17

selling price of bonds, 1224.16

serial bonds

definition of, 1224.3

issued when, 1224.3

term of bonds, 1224.4

State highway treasury anticipation debenture

bonds, 2381.4b

State officers', 464

adjutant general, 464

assistant

chief clerk of the state treasurer, 464

registrar of state land office, 464

superintendent of banks, 464

attorney general, 464

auditor, 464

bank examiner, 464

bond clerk, state treasurer, 464

chief clerk

secretary of state, 464

state treasurer, 464

chief engineer of highway commission, 464

chief grain inspector, 464

deputy

insurance commissioner, 464

registrar of state lands, 464

secretary of state, 464

state auditor, 464

state treasurer, 464

fire marshal, 464

game warden, 464

grain inspector, 464

highway commission's principal assistant, 464

income tax auditor, 464

industrial accident board

chairman, 464

chief accountant, 464

livestock commission's secretary and chief

clerk, 464

market inspectors, 464

public instruction superintendent, 464

railroad commissioners, 464

railroad commission's secretary, 464

registrar of state land office, 464

Bonds—Continued**State officers'—continued**

secretary of state, 464

clerks, 464

secretary of state board of health, 464

state auditor, 464

state forester, 464

state treasurer, 464

state veterinarian, 464

supreme court clerk, 464

Tuberculosis sanitarium, 1525.2

Tuberculosis sanitorium, 1525.2

payment, 1525.3

sinking fund, 1525.3

Under public works emergency relief act, 3033.29

Validity of, 5668.13a—5668.13h

Bonds, ConvertibleSee **Corporations****Bonds, Validity**See **Attorney General**

Boulder, Montana state training school, 1473.4

Bounties for killing predatory wild animals, 3417.17

BrandsSee **Inspection of Brands of Livestock****Brattice Cloth**See **Coal Mining Regulations**

Brewer, definition of, 2815.11

BrewersSee **Beer**

Brewers, failure to file statement, 2815.13

Bright lights, users of highway, 1741.7

BudgetSee **High School Budgets**

Junior colleges, 930.16

Meetings, high school budget system, 1263.5

Printing and distribution, 302

System, high schools, 1263.5

Building and Loan Associations, 6355.13—6356.3

Assessments and collection from members, 6355.13

Authorized to invest in home owner's loan

corporation bonds, 5309.35

Borrowing money and pledging assets, 6355.13

Consolidation of associations, 6355.13

Corporation license tax exemptions, 2296

Dissolution, 6355.13

Investments, 6355.13

Loans

to members, 6355.13

to other associations, 6355.13

Powers and duties of, 6355.13

Property

acquisition of, 6355.13

conveyance of, 6355.13

Stock

cancellation of, 6355.13

issuance to minors, 6355.13

Stock credits, withdrawal of, 6355.13

Buildings**See County Finances, Bonds and Warrants**

- Dormitories for high schools, 1262.32-1
- High school, bonds to provide for, 1262.32-1
- Journalism, state university, 877.7
- Junior colleges, 930.11

Bureau of child protection, 349A.69

Bureau of Child and Animal Protection

- Secretary of
 - ex-officio member state temperance commission, 2815.205
 - ex-officio president of state temperance commission, 2815.206

Bureau of Mines and Geology

- Object and duties, 884
- Traveling expenses, 884

Burglary, highway patrolmen to arrest, when, 1741.9

Burning of registry files, 570.1

Business, definition of, 10598.1

Business trust, corporation license tax, 2296

Business records, admissability of in evidence, 10598.2

Butchers and Meat Peddlers

- Hides
 - exhibition of, or bill of sale, to inspector, 3298.19
 - inspection of, before disposal, 3298.19
- Regulation, 3298.19

Butter**See Dairy Products**

- Definition of, 2620.4
- How wrapped, 2620.34

C

Calling of election, school bonds, 1224.10

Camp Fires

- Camping grounds, 1840.14
- Failure to extinguish, 1840.15
- Penalties, 1840.15

Camping Grounds**See Camp Fires**

Canals, assessment of, 2138

Cancellation of assistance, 349A.44

Cancellation of

- Elector's registration, 562
- Local option licenses, 2815.197
- Oil and gas leases, 9479.1
- Registry card, 570

Candeling of eggs, 2634.5

Candidates**See Ballots**

- Political designation of, ballots, 681
- Names of, 662
- Writing names on ballots, 678

Canvass of returns, 654

Can Washers**See Dairy Products****Capitol Building****See Bonds****Capital Refunding Bonds****See Board of Examiners**

- Board of examiners may issue, 283.2
- Expenses of issuance, 283.7
 - appropriation for, 283.7
 - budget act not controlling, 283.8
- Interest rate, 283.3
- Registration of by state treasurer, 283.6
- Sale of, 283.5

Capital stock associations, corporation license tax, 2296

Care of the County Poor

- Burial of deceased soldiers, sailors and marines, 4536
 - by officers of public institutions, 4536
 - death while absent from county of residence, 4536
- expense, maximum, 4536
- supervisor's duties, 4536

Carey Land Act Board, 1956.2

- Appropriation of water by Wyoming, 1956.2
- approval by conservation board, 1956.2
- Cooperate with Wyoming in water right matters, 1956.2
- Powers, 1956.2
- Reciprocal legislation of Wyoming, 1956.2
- State engineer, 1956.2

Cash, Surplus**See State Surplus Cash****Cattle****See Inspection of Horses and Cattle Removed from State****Cattle Hides****See Hides of Slaughtered Cattle, Regulations****Cemeteries****See Associations****Cemeteries, Annual Reports****See Corporations****Cemetery Associations****See Bonds**

- Accounts open to inspection, 5602
- Annual meeting, 6484
- Annual reports, 6484
 - of trust fund, 6502
- Cities may furnish water free, 6479
- Corporation license tax exemptions, 2296
- County attorneys to prepare reports, 6484
- Funds, 6489
 - accounting of, 6494
 - investment of, 6499
 - approval of investments, 6499
 - board of trustees to approve, 6499
 - judge to approve, 6499
 - title vested in district court, when, 6494

Cemetery Associations—Continued

- Gifts to, 6479
- Incorporation of, 6479—6502
- Map of cemetery to be filed, 6479
- Personal property, sale of, 6479
- Secretary to record trustee appointments, 6495
- Trustees of funds, 6489
 - bond of, 6491
 - compensation of, 6500
 - recording of appointments of, 6495
 - removal from office, 6490
 - secretary of board of trustees, 6501
 - tenure of office, 6490
 - to make annual report, 6502
 - trust company as trustee, 6489
- Water furnished free, 6479

Cemetery Reports

See **County Attorney**

- Census reports, basis for liquor license fees, 2815.167
- Central committeemen, 662

Certificate of

- Blindness, by ophthalmologist, 1473.11
- Ownership of motor vehicles, fees, 1758.4
- Registration of ownership of motor vehicles, 1758
 - transfer of, 1754.20
- Certified public accountants, 3241.1
- Chain stores, license fee, 2428.5

Chairman

- Industrial accident board, bond of, 464
- Montana liquor control board, 2815.63
- State park commission, 1871.3
- Teachers' retirement board, 1132.3

Challenge

- Jury, 9343
 - for cause, 9344
- Voters, school trustees, 1003
- Chamber of commerce, corporation license tax
 - exemptions, 2296

Change of Residence

- Aid to blind, 349A.66
- Old age assistance, 349A.46
- Registration for election, 561
- Charitable institution employees, exempt from
 - jury duty, 8893

Charitable Organizations

- Corporation license tax exemptions, 2296
- Exempt from gambling act, 11159.2

Charities, Board of

See **State Board of Charities and Reform**

- Chattel mortgages, motor vehicles, surrender of
 - certificate of ownership, 1758.3
- Chauffeur license, suspension of, 1754.12

Cheese

See **Dairy Products**

- Cheese, definition of, 2620.4
- Cheese factories, location of, 2620.20

Cheese factory, definition of, 2620.4

Chief accountant, industrial accident board,

- bond of, 464

Chief clerk of the state treasurer, bond of, 464

Chief clerk secretary of state, bond of, 464

Chief engineer of highway commission, bond of, 464

Chief grain inspector, bond of, 464

Child Protection

See **Bureau of Child and Animal Protection**

Children

See **Crippled Children**

Public Welfare

- Compensation under workman's compensation
 - act, 2891
 - when ceases, 2891

Crippled, public welfare act, 349A.74

Death and annuity on lives of, 6339

Dependent

See **Dependent Children**

Needy and dependent, public welfare act, 349A.74

Service of summons on, 9111

Children, Delinquent

See **Proceedings Against**

Child welfare, 349A.7

Child welfare division, board of health,

- 349A.71, 2511—2514

Child Welfare Services, 349A.69—349A.73

County board of public welfare, duties of, 349A.73

- definition of, 349A.70

Organization and administration of, 349A.71

Public welfare act, 349A.74

State department of public welfare, powers

- and duties, 349A.72

Child Welfare Worker

See **Child Welfare Services**

Child welfare worker, definition of, 349A.70

Chiropody, 3154.1—3154.11

Acts not prohibited, 3154.11

Acts prohibited, 3154.2

amputations, 3154.2

general anesthetics, administration, 3154.2

Application of act, 3154.10

Board of examiners, 3154.3

appointment, 3154.3

creation of, 3154.3

examinations, 3154.3

fees, 3154.3

personnel, 3154.3

terms, 3154.3

vacancies, filling of, 3154.3

Definitions, 3154.1

Examiners, 3154.3

Fees for examination and license, 3154.3

Examinations, fees, 3154.4

subjects of, 3154.4

License, 3154.2

display of, 3154.5

Chiropody—Continued

License—continued

fees, 3154.3

qualifications of applicants for, 3154.3

recorded in office of county clerk, 3154.5

refusal of, 3154.6

re-issuance of, 3154.5

renewal of, 3154.5

fee, 3154.5

revocation of, 3154.6

reissue after six months, 3154.6

Licensees, designation of, 3154.5

Non-resident practitioners, examination

waived, 3154.3

ChiropodistSee **Podiatry**, 3154.1—3154.11

Chiropractor, property exempt from execution, 9428.1

Churches

Incorporation of, 6453

Sale of liquors near, 2815.176

Cigarettes, restrictions on, forest area, 1840.17

Cigars, restrictions on, forest area, 1840.17

CitiesSee **Bankruptcy****Cemetery Associations**

Funds, deposit of, 4767.4

Investment of sinking funds, 4622.1

May require accident reports, 1754.42

Service of summons on, 9111

Cities and Towns

Commission-manager plan of government, 5486

director of public service may order sewer,
water, gas, or other connections to be
made, 5486

cost of connection, 5486

paid in installments, 5486

notice, contents, 5486

published for non-residents, 5486

Refunding municipal bonds and indebtedness,

5288.1—5288.17

Sinking funds, investment, 4622.1

City and county central committeemen, 662

City firemen, exempt from jury duty, 8893

City treasurer, notice of redemption, tax
certificate, 2231

Civics, course of study, 1054

Civil Actions

Issues of fact, 9327

Manner of commencing, 9111

Pre-trial procedure, 9327

Civil officers, exempt from jury duty, 8893

ClaimsSee **Estates, Claims Against****Claims Against Counties**See **Abandonment of Counties**

Claims against estate, 10178

Claims of CountiesSee **Abandonment of Counties****Classification of Property for Taxation, 1999—2000.4**

Basis for taxation, 1999—2000.4

National bank stock, deductions, 2000.4

Classified forest land, duties of owner, 1840.9

Cleaning and dyeing, gasoline used for, tax
refund, 2396.4Clerk and recorder, ex-officio secretary and clerk of
county welfare board, 349A.9Clerk of court, duties under motor vehicle act,
1754.12

Clerk of district court, to receive poll books, 782

Clerk of school district, to sign notice of
election, 1224.10**Clerk of the Supreme Court, 372—377**

Bond of, 377

Court attendant, 377

appointment, 377

duties, 377

salary, 377

Fees, collecting of, 372

Clerk of district court, bonds of, 466

Clerks, secretary of state, bond of, 464

Clinics, designation of, treatment of the blind,
349A.64**Close Pursuit**See **Uniform Act on Close Pursuit**Club members, Montana beer act, definition of,
2815.11

Club, Montana beer act, definition of, 2815.11

Clubs, corporation license tax exemptions, 2296

Coal leases, 1805.51-10

Coal Mine License TaxSee **Attorney General****County Attorney**

Amount of, 2317

determination of, 2323

Exceptions, 2317

Penalties, 2323

Procedure to determine, 2323

State treasurer to collect, 2323

Tax lien, 2323

Coal Mining Regulations

Air circulation, 3501

minimum oxygen content, 3501

Brattice-cloth

use of in fire damp rooms, 3501

use of to control air currents, 3504

Cross-cuts, 3504

distance apart, 3504

Employees

facilities, 3486

wash houses, 3486

Fire damp, 3501

air conducted to face by brattice-cloth, etc., 3501

Operators liable for fire loss of employees,
exception, 3486

Collection of

- Contributions, teachers' retirement fund, 1132.10
- Personal property taxes
 - assessments, 2238
 - by seizure and sale, 2239
 - duty of
 - assessor, 2238
 - treasurer, 2239
 - duty to report, 2238
 - liability of treasurer, 2239
 - report to county treasurer, 2238
 - uncollected personal property taxes, 2239
- Property taxes, 2182—2235

Colleges**See Junior Colleges**

- Junior, 930.8—930.19
- Teachers, exempt from jury duty, 8893

Commensurate property, definition of, 7364.29-2

Commercial Fertilizers**See Regulation of****Commissioner of**

- Agriculture, 3597
 - hay dealers, rules and regulations, bond, and license, 3649.1j
 - itinerant merchants regulations, to make, 2429.34
 - licenses, egg dealers, 2634.1
 - powers and duties, 3597
- Insurance
 - motor vehicle liability policies
 - approval, 1754.23
 - commissioner to receive copy, 1754.23
- State lands, consent to science commission's, publications, 1575.3

Commission for the Blind, 1473.5—1473.15

- Accounts and audit for industries, 1473.13
- Appointment, 1473.6
- Blindness, definition of, 1473.11
- Blind persons, 1473.9
 - expenses during training, 1473.9
 - tuition, 1473.9
- Compensation and expenses, 1473.6
- Cooperation
 - of Montana school for deaf and blind, 1473.12
 - compensation, 1473.12
 - with federal government, 1473.7
- Creation of, 1473.5
- Duties, 1473.5, 1473.10
- Employees, 1473.9
- Gifts, reception, 1473.14
- Industries, accounts and audit for, 1473.13
- Meetings, 1473.8
- Office, location of, 1473.8
- Personnel, 1473.6
- Proceeds from industries, 1473.13
- Rehabilitation of blind, purpose of act, 1473.15
- Secretary and treasurer, 1473.8
- Supervisor for blind, 1473.9
- Vocational education, 1473.9

Commission of state land office, state monuments, 1575.4

Commission-Manager Plan**See Cities and Towns****Commissions**

- State highway, 1797.1—1800.2
- State insurance, 173.1a—173.1c
- State park, 1871.1—1871.9
- State temperance, 2815.205—2815.213
- Unemployment compensation, 3033.10

Committeemen, 662

- Term of office, 662
- Vacancy of office, 662

Commodity, definition of, fair trade act, 7590.1

Common law, judicial notice of, 10532.1

Common law trust, corporation license tax, 2296

Common school and income fund, appropriation to 2343.3

Common school equalization fund, 1200.4

Compensation of Assembly Officers and Employees**See Legislative Assembly****Compensation****See Children****Unemployment Compensation**

- Judges of elections, 654
- Personal injuries, income tax, 2295.7
- Sickness, income tax, 2295.7
- State officers and employees, 442.1

Compensatory Relief, 8666

- general provisions, 8706.1

Complaints

- Against liquor licensees, 2815.187
- Pleadings allowed, 9127
- Quieting title, 9479.1
- Tax deeds, actions concerning, 2215.2

Concurrent policies, motor vehicle liability insurance, 1754.23

Condemnation, cities have right of, 5039.74

Conditional Sales Contracts, Motor Vehicles, 1758.3

- Registered with registrar, 1758.3
- Surrender of certificate of ownership, 1758.3

Conducting elections, 689.1—700

Confidential reports, accident reports, 1754.40

Conservation Committee**See Soil Conservation Districts****Conservation Districts****See State Grass Conservation Commission****Conservation Experimental Station****See Montana State University**

Conservation, Montana agricultural act, 306A

Conservation of Grass**See Grass Conservation Act**

ConsolidationSee **Counties**

Consolidation of companies, rural electric association, 6396.15

Consolidation of county offices, salary and bond of officers on consolidation, 4749.7

ConstablesSee **Abandonment of Counties**

Constables, prevent destruction of historic materials, 1575.8

Constitution Day

Designation, 1070.1

How observed, 1070.2

ConstructionSee **Electrical Construction**

Moneys, state highways, 2396.3

Roads, state parks, 1871.7

Rural electric cooperative act, 6396.31

Statutes, jurors, 8890.1

Consumer, milk control act, definition of, 2640.3

ContainersSee **Dairy Products**

Containers, milk and cream, condemnation of, 2620.73

Contents of application for assistance, aid to blind, 349A.60

Contesting elections, 828.1—828.4

Contractors' licenses, 2433.5—2433.6

ContractsSee **Abandonment of Counties**

Amortization, sale of state lands, 1805.88b

For purchase of tax deed lands, 2208.1a

Unfair practices act, 10915.9

ContributionsSee **Unemployment Compensation**

By state, teachers' retirement fund, 1132.11

Collection of, under unemployment compensation law, 3033.14

Under unemployment compensation law, 3033.7

Control board, milk, 2639.1—2640.26

Conveyance of real estate by executors and administrators, 10269—10279.9

Conviction

Felon, cancellation of registration, 570

Violation of motor vehicle code, 1754.12

Cooperation

Milk control board with other governmental agencies, 2640.21

Of federal government, state commission for the blind, 1473.7

Cooperation of StatesSee **Intergovernmental Cooperation****Cooperative Associations**

Milk dealers, 2640.19

Unfair practices act, 10915.7

Cooperative economics, course of study, 1054

Cooperatives

Rural electric associations, 3696.18

Rural electric corporations, 6396.2

Cooperative state grazing district, member to state grass conservation board, appointed from, 7364.29-3

CopyrightsSee **Affidavit of****Copyrights, Protection of**See **Protection of Copyrights**, 6815.1—6815.10**Coroners**

Accidents

reports of, 1754.38

reports to, 1754.34

Fees, 4922

Justice of the peace acting as, 4922

Salary in some counties, 4922

Corporate ConversionSee **Articles of****Corporate Dissolution**See **Articles of**

Corporate instruments, recording of, 6893

Corporate stock dividends, income tax, 2295.7

Corporation license tax, 2296

CorporationSee **Dissolution of Corporations****Foreign Corporations****Rural Cooperative Act****Corporation, Acknowledgments**See **Acknowledgment and Proof of Instruments****Corporation Consolidation**See **Articles of****Corporation License Tax**See **Associations****Building and Loan Associations****Cemetery Associations****Charitable Organizations****Corporations**

Amendment of articles of incorporation, 5918

certificate of proceedings, 5923.1

contents, 5923.1

filing of, 5923.1

fee, 5923.2

increase of stock, 5919.1

method of amending in addition to other legal methods, 5928.1

procedure, 5923.1

purposes of, 5918

when effective, 5923.1

Annual reports, cemetery associations, 6484

Bonds and other obligations convertible into stock, 5994.1

Conversion to comply with rural electric cooperative act, 6396.16

Corporations—Continued

- Defunct, service of summons on, 9111
- Directors, powers to issue obligations convertible into stock, 5994.1
- Dissolution, 6011
 - directors become trustees, 6011
 - partial invalidity of act, 6011.1
 - property
 - action to determine ownership, 6011
 - attorney's fees, 6011
 - conveyance of by trustees, 6011
 - disposing, 6011
 - distribution, 6011
 - saving clause, 6011.1
 - stockholder, defined, 6011
 - transfer of property to new corporation, 6011
 - trustees
 - conveyance of property by, 6011
 - directors become, 6011
 - duties, 6011
 - fees, 6011
 - may sue and be sued, 6011
 - winding up affairs, 6011
- Foreign, 6651
- Incorporation of
 - cemetery associations, 6479—6502
 - religious, social and benevolent corporations, 6453
- Increase of stock
 - majority of stock must authorize, 5994.1
 - thirty days notice of meeting, 5994.1
- License tax, 2296
- Obligations convertible into stock, 5994.1
- Organization and management, 5918—5928.1
- Service of summons on, 9111
- Unlawful practices by, 10915.2
- Water users' corporations, 7165.1
 - articles of, 7165.1

Correspondence School

See **State Correspondence School**

Cosmetologists

See **Cosmetology and Hairdressing**

Cosmetology and Hairdressing, 3228.1—3228.17

- Bond of secretary-treasurer, 3228.10
- Certificate of registration, 3228.3
 - examination for issuance of, 3228.3
 - fees, 3228.15
 - issuance of, 3228.7
 - refusal, revocation, or suspension of, 3228.3
 - renewal, 3228.16
 - required before practicing or teaching, 3228.3
 - term of, 3228.16
- Communicable disease, licensee suffering from, 3228.3
- Court action to review decisions of board, 3228.11
- Definitions, 3228.2
- Duration and renewal of licenses and certificate, 3228.16
- Examination, 3228.3
 - eligibility for, 3228.3
 - fees, 3228.15

Cosmetology and Hairdressing—Continued

- Examination—continued
 - operators license, 3228.8
 - persons trained under vocational rehabilitation
 - exempt for one year, 3228.8
 - qualifications required, 3228.3
 - when held, 3228.8
- Fees, 3228.15
- Inspector, 3228.13
 - of beauty parlors, 3228.13
 - salary and expenses, 3228.13
- License, 3228.1
 - apprentice's, 3228.3
 - examination for, 3228.3
 - qualifications required, 3228.3
 - fees, 3228.15
 - issuance of, 3228.7
 - licensee suffering from communicable disease, 3228.3
 - renewal, 3228.16
 - required to practice or teach, 3228.1
 - revocation and suspension, 3228.11
 - grounds for, 3228.11
 - procedure, 3228.11
 - teachers, 3228.3
 - temporary, 3228.3
 - term of, 3228.16
- Penalties, 3228.17
- Rules and regulations, state board may make, 3228.3
- Schools, 3228.3
 - attendance record, 3228.3
 - certificate of registration for, 3228.3
 - requirements for, 3228.3
 - employment of licensed teachers, 3228.3
 - equipment required, 3228.3
 - revocation of certificate, 3228.3
 - sanitation, 3228.3
 - school term, 3228.3
- State examining board, 3228.4
 - annual meeting, 3228.5
 - appointment, 3228.4
 - compensation, 3228.9
 - court review of decisions, 3228.11
 - creation of, 3228.4
 - duties, 3228.11
 - expenses, 3228.9
 - make rules and regulations, 3228.3
 - officers, 3228.5
 - powers and duties, 3228.11
 - qualifications of members, 3228.4
 - revoke and suspend licenses, 3228.11
 - grounds, 3228.11
 - procedure, 3228.11
 - salary of secretary, 3228.9
 - secretary-treasurer, bond of, 3228.10
 - terms of office, 3228.4
- Violations of act, penalty, 3228.17
- Cost bill, 9791
- Cost, definition of, 10915.3
- Cost of doing business, definition of, 10915.3

Costs, under uniform drug act, lien on real estate, 3202.29

Counties, Abandonment

See **Abandonment of Counties**

County Finances, Bonds and Warrants

Counties

Abandonment procedure, Const. Art. XVI, § 8
Consolidation, procedure, Const. Art. XVI, § 8
Investment of sinking funds, 4622.1
Legislative representatives, number apportioned to each county, 45
Officers, qualifications, election,
Const. Art. XVI, § 5
Recovery of damages from, 8706.1
Service of summons on, 9111

County and city central committeemen, 662

County Assessor

Deputies, maximum number of, 4880
Bond of, 466
Report to board of equalization, 2139
To assess railroads in county, 2132
To receive assessment information from state board, 2144

County Attorney

Action to collect coal mine license tax, 2323
Bond of, 466
Deputies, maximum number of, 4880
Ex-officio legal advisor to county welfare board, 349A.9
Prevent destruction of historic materials, 1575.8
Cooperation with state temperance commission, 2815.210
Duties under state pharmacy act, 3202.10
Montana state board of food distributors, prosecute for, 2599.15
To abate liquor nuisances, 2815.106b
To foreclose on forest fire assessments, 1840.13
To prepare cemetery reports, 6484
To prosecute under milk control act, 2640.22

County Auditor

Bond of, 466
Deputies, maximum number of, 4880

County Boards of Health, 2484.1—2484.8

Public welfare
aid to blind
determine eligibility of applicant, 349A.62
granting of aid, 349A.62
child welfare services
duties of board, 349A.73
powers and duties, 349A.10

County Board of Public Welfare

See **Child Welfare Services**

County Budget

Adoption of, hearings on, 4613.4
Copy to be sent state examiner, 4613.4
failure to send, penalty, 4613.4

County Budget—Continued

Expenditures, 4613.4
limitation of, 4613.4
Fixing amount due separate funds, 4613.4
Hearings on adoption of budget, 4613.4
Levy of taxes, 4613.4

County Central Committee

Meeting of, how called, 662
Proxies, 662

County Clerk

See **Abandonment of Counties**

As registrar of electors, 555
Bond of, 466
Cancel registry cards, when, 570
Duties
burning registry files, 570.1
concerning taxes, 2159
elections, 654
ballots to be furnished, 678
local option, 2815.195
under act for abandonment of counties, 4426.4
Rural rehabilitation projects, filing of agreements with, 349B.10

County clerks and recorders, registration of motor vehicles, 1758.3

County commissioners' association, member to state grass conservation board, appointed from, 7364.29-3

County Commissioners

See **Abandonment of Counties**

Board of

Printing Contracts

Boards of, general powers of, 4465.3a—4466
conflicting acts suspended, 4465.27-1
county property
lease of, 4465.27
revenue from, 4465.27
disposition of, 4465.27
subject to sale, 4465.27
sale of, 4465.9a, 4466
deeds in fee simple, validation, 4466
prior sales, validation of, 4465.9a
school property, 4465.9a
highway equipment, loan to cities and towns, 4465.3a
repeal, 4465.27-1
Bonds of, 466
Compensation, 4464
Cooperation with state grass conservation commission, 7364.29-1
Emergency relief employment, powers and duties under, 335.17-1—335.17-7
Ex-officio county welfare board, 349A.9
Justice of peace courts, duty to furnish rooms and blanks to, 4520.2
Organization, meetings, and compensation, 4464
Powers over stock lanes, 1651.4
Relief warrants, issuance by, 335.17-2
Special powers and duties, 4465.3a—4466
Stock lanes, to determine width of, 1651.2

County coroners, bonds of, 466
 County debt limitation, high schools, 1262.34-1
 County departments of public assistance, 349A.11

County Department of Public Welfare

See **Public Welfare**, 349A.1—349A.82

Aid to blind
 application for, 349A.60
 local administration of, 349A.57
 Dependent children, supervision of, 349A.48b
 Old age assistance, administration, 349A.35
 Public welfare act, 349A.74

County Finances, Bonds, and Warrants

Bonds

county commissioners may issue for certain purposes, 4630.1
 elections, 4630.12
 county clerk prepares lists of electors, 4630.12
 registration, notice of, 4630.12
 who eligible to vote, 4630.12
 in excess of 2½% limitation, may issue for certain purposes, 4630.3
 interest, maximum, 4630.4
 limitation on amount of, 4630.3
 issued in excess of, void, 4630.3
 maturing, refunding bonds may issue, 4630.1
 may issue without an election, when, 4630.6
 procedure, 4630.6
 sale of, 4630.6
 outstanding, not affected by repeal, 4630.6-1
 power to redeem, 4630.4
 purchase in market with sinking fund, 4630.30
 delivered to county clerk, 4630.30
 entered in record of registration, 4630.30
 marked paid and coupons cancelled, 4630.30
 redemption of before maturity, 4630.29
 procedure, 4630.29
 when money in fund in excess of needs, 4630.29
 terms of, 4630.4
 Buildings, commissioners may issue bonds to acquire, 4630.1
 Counties, investment of sinking funds, 4622.1
 Floating indebtedness, 4630.6-2
 county commissioners, procedure by, 4630.6-3
 funding bonds or taxation authorized to pay, 4630.6-2
 interest, rate of, 4630.6-2
 special tax levy, 4630.6-2
 proceeds deposited in special fund, 4630.6-2
 Highways, bonds may issue for construction, 4630.1
 Indebtedness exceeding constitutional limitation, procedure, 4630.1
 Judgments, bonds may issue to pay, 4630.1
 Land, commissioners may issue bonds to acquire, 4630.1
 Rights of way, bonds may issue to acquire, 4630.1
 Sinking funds, investment, 4622.1
 interest funds, 4630.30
 protection and keeping securities, 4622.1

County Finances, Bonds, and Warrants—Continued

Sinking funds, investment—continued
 purchase bonds in market with, 4630.30
 entered on record of registration, 4630.30
 marked paid and coupons cancelled, 4630.30
 premium allowed, 4630.30
 when bonds cannot be purchased, 4630.30
 Value of taxable property, 4630.3
 definition of, 4630.3
 Warrants, county, bonds may issue for funding, 4630.1

County Funds

See **Abandonment of Counties**

County general fund, estates of non-resident aliens, 7090.4
 County high school boards, junior colleges, 930.9

County High Schools

See **Abandonment of Counties**
High School Code

County Indebtedness

See **Abandonment of Counties**

County Jail

Employees, exempt from jury duty, 8893
 Imprisonment in, motor vehicle code, 1741.8

County Lands

See **Board of County Commissioners**

Exchange of, 2208.1
 Lease of, 2208.1
 Sale of, 2208.1

County librarians, bonds of, 466

County Officers

See **Bonds**

Counties

Elected, when, 4728
 Exempt from jury duty, 8893
 Term of office, 4728
 Vacancies, how filled, 4728

County Old Age Pension Commission

Certification of eligible, 349A.46c
 Warrants, issuance of, 349A.36d

County Poor

See **Care of**

County Poor Fund

Funeral expenses, old age relief, 349A.41
 Old age assistance, payment of, 349A.46a
 Warrants, issuance of, 349A.46d

County printing contracts, 4482.1

County Property

See **Abandonment of Counties**
County Commissioners

County public welfare board, guardian appointment by, 349A.42

County Records

See **Abandonment of Counties**

County share of participation in aid to
blind, 349A.65

County Superintendent of Schools, 975

Bonds of, 466
Clerk, 975
Deputy, 975
Salaries, 975

County surveyors, bonds of, 466

County to determine amount of relief, 349A.40

County Treasurer

Assessor to report to, 2238
Bonds of, 466
Deputies, maximum number of, 4880
Funds, deposit of, 4767.4
 conform to federal regulations, 4767.4
 interest required, 4767.4
License plates, issuance, 1759.2
Municipal funds, deposit of, 4767.4
 interest required, 4767.4
Rural rehabilitation projects
 filing of agreements with, 349B.10
 present bills to United States, 349B.10
Sale of unredeemed property, 2235
Tax certificates, notice of redemption, 2231
Taxes illegally collected, 2222
Tax payers, notice to delinquent, 2233.2
Witness fees, payment, 1441

County welfare, 349A.7

County Welfare Department

Dependent children
 reconsideration of amount of assistance, 349A.54
 removal to another county, 349A.55
Periodic review of assistance grants, 349A.44
Reimbursement to state, 349A.39

Courses of study in public schools, 1054

Court Attendant

See **Clerk of the Supreme Court**

Court Attendant, Supreme Court

Appointment, 377
Duties, 377
Salary, 377
Term, 377

Courts

See **District Courts**

Justice Courts

Eminent domain, jurisdiction, 9939
Hearing and order of court, 9444.4
Issues of fact, 9327
Pre-trial procedure, 9327
Revision of terms of mortgages, 9444.8
Trial by, 9367

Courts of record, drawing and summoning of
jurors, 8903, 8904

Cream collecting station, definition of, 2620.4

Cream containers, condemnation of, 2620.72

Cream, pasturization of, 2620.49

Creameries

See **Dairy Products**

Creameries, location of, 2620.20

Creamery, definition of, 2620.4

Creation of high school districts, 1301.2

Creditable service, definition of, retirement
system, teachers, 1182.1

Credit, definition of, 1996

Crime Against Nature

See **Crimes**

Crimes and penalties, motor vehicle violation, 1741.8

Crimes

Bigamy, incest, and crime against nature, 11080
False impersonation, registration of electors, 555
Interference with balloting, 700
Motor vehicle act, violation of, 1751.9

Criminal Law

Arrest

by telegraph, 11737

warrant

 directed to what officers, 11737

 executed in another county, when and
 how, 11737

close pursuit

 uniform act on close pursuit, 11772.1—11772.6
 arrest, 11772.1

 by officer from another state, 11772.1

 authority, 11772.1

 duty of judge, 11772.2

 hearing before judge of court of
 record, 11772.2

 legality of, 11772.2

 certification of act to other states, 11772.5

 construction of act, 11772.3

 “state” includes district of columbia,
 11772.4

 short title, 11772.6

Extradition, uniform act, 1248.1—12428.30

 accounts of officer returning accused from
 another state, 12428.24

 audit and payment of, 12428.24

arrest of accused

 before demand for extradition, 12428.13

 commitment to await demand, 12428.15

 without warrant, 12428.14

 if not arrested under governor's
 warrant, procedure, 12428.17

 under governor's warrant

 confinement in jail

 when necessary, 12428.12

 while being transported, 12428.12

bail, 12428.16

 bail bond

 conditions of, 12428.16

 forfeiture of, 12428.18

 recovery on, 12428.18

 commitment, time of may be extended if not
 arrested under governor's warrant, 12428.17

definitions, 12428.1

Criminal Law—Continued

Extradition, uniform act—continued

- demand for, 12428.3
 - arrest of accused before demand, 12428.13
 - application for issuance of, 12428.23
 - by whom made, 12428.23
 - commitment to await demand, 12428.15
 - contents of, 12428.23
 - form, 12428.3
 - guilt or innocence, 12428.20
 - when inquired into, 12428.20
 - investigation by governor, 12428.4
 - persons, imprisoned or awaiting trial in another state or who have left the demanding state under compulsion, 12428.5
 - agreement for return of, 12428.5
 - not present in demanding state at time of commission of the crime, 12428.6
 - persons under criminal prosecution in this state at time of, 12428.19
 - rights of accused, 12428.10
 - failure to comply with sec. 12428.10, penalty, 12428.11
 - judge must inform him of, 12428.10
 - to apply for a writ of habeas corpus, 12428.10
 - warrant for arrest
 - execution of, 12428.8
 - issued by governor, 12428.7
 - recitals in, 12428.7
- fugitives from justice, 12428.2
 - arrest of, 12428.2
 - duty of governor, 12428.2
 - from this state, 12428.22
 - duty of governors, 12428.22
 - may be tried on other criminal charges in this state, 12428.26
 - voluntary return, 12428.25a
 - warrant issued by governor of other state, 12428.22
 - non-waiver of rights by this state, 12428.25b
 - waiver of extradition, 12428.25a
- habeas corpus, accused has right to apply for writ of, 12428.10
- immunity from service of process in certain civil actions, 12428.25
- interpretation of act, 12428.27
- no immunity from other criminal prosecutions while in this state, 12428.26
- non-waiver of right of this state to try fugitive, 12428.25b
- officer returning accused from another state, 12428.24
 - accounts of, 12428.24
- short title, 12428.30
- waiver of extradition, 12428.25a
 - procedure, 12428.25a
 - returned after, immune from service of process, 12428.25

Criminal Law—Continued

Extradition, uniform act—continued

- warrant of arrest, 12428.7
 - alias warrant, 12428.21
 - authority of arresting officer, 12428.9
 - issued by governor, 12428.7
 - delivery of accused, 12428.8
 - execution of, 12428.8
 - manner and place of, 12428.8
- Local jurisdiction when property is feloniously taken in one county and brought into another, 11712
- Parolee supervision out of state, 12266.1—12266.2
 - compact between the states authorized, 12266.1
 - ratification, 12266.1
 - renunciation, 12266.1
 - definitions, 12266.1
 - parolee residence in another state
 - employment, 12266.1
 - investigations, 12266.1
 - retaking probationer, 12266.1
 - extradition waived, 12266.1
 - rules and regulations to carry out provisions, 12266.1
 - visitation and supervision, 12266.1
- Probation, 12078—12082.1
- Sentence
 - suspension, 12078
 - bureau of identification to receive copy of judgment and suspension, 12082.1
 - court retains jurisdiction, 12082.1
 - power of court to suspend, 12078
 - prison commissioners, copy of judgment and suspension mailed to, 12082.1
 - revocation of suspension, 12078
 - hearing, defendant entitled to, 12078
- Witnesses out of state, attendance, 12186.3
 - uniform act to secure in criminal cases
 - definition, 12186.1—12186.6
 - short title, 12186.6
 - uniformity of interpretation, 12186.5
 - witness from another state to testify in this state, 12186.3
 - exemption from arrest and service of process, 12186.4
 - failure to appear and testify,
 - punishment, 12186.3
 - fees and mileage, 12186.3
 - judge to issue certificate, 12186.3
 - taken into custody, when, 12186.3
 - witness in this state summoned to appear in another, 12186.2
 - disobedience to summons, penalty, 12186.2
 - exempt from arrest or service of process in the state requesting, 12186.4
 - failure to appear, penalty, 12186.2
 - hearing before judge of court of record, 12186.2
 - matters considered by judge, 12186.2
 - mileage and fees, 12186.2
 - procedure, 12186.2
 - taken into custody when, 12186.3

Criminal Procedure

- Judgment, suspension of sentence and probation, 12078, 12082.1
- Local jurisdiction when property is feloniously taken in one county and brought into another, 11712
- Uniform act
 - for out-of-state parolee supervision, 12266.1, 12266.2
 - on close pursuit, 11772.1—11772.6
- Warrant of arrest procedure, 11737
- Witnesses
 - uniform act to secure the attendance of from without the state in criminal cases, 12186.1—12186.6

Crippled Children**See Children**

- Service for
 - definition of, 349A.70
 - public welfare act, 349A.74

Cross-Cuts**See Coal Mining Regulations****Crude Petroleum****See Oil and Natural Gas Conservation Board**

- Curative deeds, executors and administrators, 10279.9
- Custodian of trust funds, teachers' retirement system, 1132.7
- Cutout, driving with, 1741.7

D**Dairymen's Associations****See Associations****Dairy Products**

- Butter
 - dealers, license, wholesale, 2620.71
 - how wrapped, 2620.34
 - name of maker, 2620.34
 - packages containing, 2620.34
 - standards, 2620.70
- Can washers, 2620.20
- Cheese
 - dealers, license, wholesale, 2620.71
 - factories, location of, 2620.20
- Containers
 - condemnation of, 2620.72
 - sterilization of, 2620.20
- Creameries, location of, 2620.20
- Eggs
 - candeling of, 2634.5
 - certificate of candeling, 2634.5
 - dealers, license, 2634.1
 - defined as unfit for human use, 2634.6
 - grade of, notice, 2634.8
 - graders
 - licensed, 2634.13
 - revocation of license, 2634.14
 - imported, labeling of, 2634.7

Dairy Products—Continued

- Eggs—continued
 - invoice to show grade of, 2634.9
 - Montana state egg seals, 2634.12
 - funds derived from, 2634.15
- Factories
 - floors, washing of, 2620.20
 - ventilation and light, 2620.20
- Funds derived from license fees, 2634.15
- Ice cream factories, location of, 2620.20
- Ice cream mix factories, location of, 2620.20
- Licenses, 2620.71
- Non-standard commodities
 - sale of, 2620.4
- Pasturization of, 2620.49
- Penalties under act, 2634.11
- Regulation of production and sale of, 2620.4—2634.15
- Storage of, 2620.20
- Violations of act, 2634.11
- Wholesale cheese dealers license, 2620.71
- Wholesale butter dealers license, 2620.71

Damages**See Counties**

- Ability to pay, motor vehicle act, 1754.12
- Personal injury actions, 8706.1
- Recovery from county, 8706.1

Deaf and Blind School**See Montana School for Deaf and Blind**

- Deaf and blind, school for, 1473.1—1473.4
- Dealer, milk control act, definition of, 2640.3

Dealers

- Gasoline tax, 2381.4i
- License plates, use of, 1759.4

Dealers in Hay**See Hay Dealers**

- Dean of forestry school, 877.2
- Deans, junior colleges, 930.19
- Death, accidents causing, 1754.29
- Death benefits, retirement system, teachers', 1132.6
- Death by operation of motor vehicle, 1754.12
- Death of elector, cancellation of registration, 570
- Death of owner of motor vehicle, transfer of title, 1758.2

Debentures**See State Highway Treasury Anticipation Debentures**

- Debentures, state highway, 2381.4a—2396.4
- Decree of quiet title, 9479.1
- Deductions from payroll, teachers' retirement fund, 1132.8
- Deed, issuance of, unredeemed property, 2235
- Deer, report, killing of, 3685

Defamation**See Radio Broadcasting**

Default, judgment by, 9322, 9664

Defendants

Answer, reply to, 9127

Service of summons on, 9111

Deficiency Bill

See **Board of Examiners**

Deficiency contribution, teachers' retirement fund, 1132.8

Deficiency judgments, mortgages, 9444.9

Definitions

Addled egg, 2634.6

Adherent yolk, 2634.6

Aid to blind, 349A.56

Amortization bonds, schools, 1224.3

Beer, 2815.11

Black rot, eggs, 2634.6

Blindness, 1473.11

Blood ring, eggs, 2634.6

Blood spot, eggs, 2634.6

Bloody white, 2634.6

Board, Montana beer act, 2815.11

Brewer, 2815.11

Business, 10598.1

Butter, 2620.4

Cheese, 2620.4

Cheese factory, 2620.4

Child welfare services, 349A.70

Child welfare worker, 349A.70

Club, 2815.11

Club member, 2815.11

Commodity, 7590.1

Cooperatives, rural electric corporations, 6396.2

Corporation license tax, 2296

Cost, 10915.3

Cost of doing business, 10915.3

Creamery, 2620.4

Cream collecting station, 2620.4

Crippled children, services for, 349A.70

Dairy products, 2620.4

Dependant child, 349A.47

Established place of business, 2429.25

Financing agreements, motor vehicles

dealer, 10915.21

finance agency, 10915.21

finance company, 10915.21

manufacturer, 10915.21

motor vehicle, 10915.21

sell, 10915.21

wholesaler-distributor, 10915.21

Food, 2599.1

Food store, 2599.1

Forest fire season, 1840.3

Forest protection, 1840.3

French ice cream, 2620.4

Fruit ice cream, 2620.4

Grand jury, 8885

Highway patrol board, 1741.11-1

Ice cream, 2620.4

Ice cream factory, 2620.4

Ice cream mix, 2620.4

Definitions—Continued

Ice cream mix factory, 2620.4

Ice sherbets, 2620.4

Incubated eggs, 2634.6

Interdicted person, liquor control act, 2815.165

Itinerant merchant, 2429.24

Junior colleges, 930.8

principal, 930.8

superintendent, 930.8

Jury, 8883

Jury of inquest, 8889

Jury trial, 8886

Liquor, liquor control act, 2815.165

Meat spot, eggs, 2634.6

Milk collecting station, 2620.4

Milk control board

association, 2640.3

consumer, 2640.3

dealer, 2640.3

distributor, 2640.3

licensee, 2640.3

market, 2640.3

milk, 2640.3

person, 2640.3

producer, 2640.3

producer-distributor, 2640.3

Milk sherbet, 2620.4

Milk, skimmed, 2620.4

Mining

full market value, 1805.51-1

gems, 1805.51-1

metalliferous minerals, 1805.51-1

mining lease, 1805.51-1

precious stones, 1805.51-1

return, 1805.51-1

semi-precious stones, 1805.51-1

Moldy eggs, 2634.6

Montana highway commission, 1741.11-1

Montana highway patrol board, 1741.11-1

Motor vehicle liability policy, 1754.23

Motor vehicle, under motor vehicle act, 1754.24

Occupational disease, 2484.6

Old age assistance, 349A.35

Ophthalmologist, 349A.56

Organized forest protection district, 1840.3

fire district, 1840.3

recognized agency (forest act) 1840.3

Overhead expense, 10915.3

Owner (forest lands) 1840.3

Pasturization, 2620.49

Patrol board, 1741.11-1

Performing rights, 6815.1

Person

under Montana beer act, 2815.11

under motor vehicle act, 1754.24

under protection of copyrights act, 6815.1

Preliminary provisions, 10713

Process butter, 2620.4

Producer, 7590.1

Produce wholesaler, 2443.3

Province, under motor vehicle act, 1754.24

Registrar, uniform accident reporting act, 1754.28

Renovated butter, 2620.4

Definitions—Continued

- Retailer, 7590.1
 - under Montana beer act, 2815.11
- Retirement system, teachers, 1132.1
 - actuarial equivalent, 1132.1
 - member, 1132.1
 - pension reserve, 1132.1
 - pensions, 1132.1
 - retirement allowance, 1132.1
- Rural electric cooperative act
 - member, 6396.30
 - person, 6396.30
 - rural area, 6396.30
- Rural rehabilitation projects
 - agreement, 349B.1
 - board, 349B.1, 349B.6
 - fund, 349B.6
 - governing body, 349B.6
 - political subdivision, 349B.6
 - project, 349B.1
 - services, 349B.1
 - state, 349B.1
 - United States, 349B.1
- Serial bonds, 1224.3
- Services for crippled children, 349A.70
- Skimmed milk, 2620.4
- State board of food distributors, 2599.1
- Stock lane, 1651.2
- Store, 2428.10
- Supervisor, uniform accident reporting act, 1754.28
- Supplementary services, aid to blind, 349A.56
- Taxation
 - credit, 1996
 - improvements, 1996
 - personal property, 1996
 - property, 1996
 - real estate, 1996
 - value, 1996
- Unemployment compensation act, 3033.19
- Vehicles, under Montana beer act, 2815.11
- Vendor, 10915.6
- White rot, eggs, 2634.6
- Wholesaler, under Montana beer act, 2815.11
- Writ of prohibition, 9862

Defunct Corporations**See Corporations**

- Defunct corporations, service of summons on, 9111
- Degrees and honors, right to award, 836a
- Delinquent taxes, notice of, 2233.2
- Delivery of insane person to asylum, 1439
- Demonstrating vehicles, 1763.8b

Demurrer**See Answer**

- To answer, pleadings allowed, 9127
- To complaint, 9127
- To reply, 9127

Dentists, exempt from jury duty, 8893

Department of Agriculture

- Commissioner of agriculture, 3597
 - duties, 3597
 - hay dealer's bond, application and license, rules and regulations relative to, 3649.1j
 - powers, 3597
- Cooperates with federal department of labor, 3635.1
- Definitions, 3593
- Director of grain inspection
 - cost of publications, 3598
 - employment of agents, 3598
 - salaries and expenses, 3598
 - laboratory, 3597
 - publications, cost of, 3598
 - paid out of laboratory fund, 3598
- Enforcement of act, duty of commissioner of agriculture, 3597
- Enforces laws for protection and regulation of farming industry, 3564
- Farm products, 3633.4
 - grades, 3633.4
 - grading and branding, 3633.4
 - Montana combination grade, 3633.4
 - seed products, 3633.4
 - United States commercial grades, 3633.4
- Federal fair labor standards act, 3635.1
 - duty of department to cooperate with federal department of labor, 3635.1
 - enforcement, 3635.1
- Fruit, infested
 - condemnation of, 3626
 - evidence of, 3626
 - import or sale, illegal, 3626
 - processing into by-products, 3626
 - permit for, 3626
- Fruit trees, 3617
 - removal of infected, 3617
 - condemnation of, 3617
 - cost, lien on land, 3617
 - power of department, 3617
- Grain inspection laboratory, 3597
 - certificate of, 3600
 - evidence, presumptive, 3600
 - presumption of correctness, 3600
 - director of to inspect grain, 3597
 - make rules and regulations, 3597
 - test seeds for citizens, 3599
 - charges for, 3599
- Hay dealers, 3649.1f
 - commissioner makes rules and regulations as to application, terms of bond, form of license, etc., 3649.1j
 - false representations as to quality, 3649.1k
 - inspection of hay, 3649.1k
 - license, 3649.1f
 - bond
 - amount of, 3649.1h
 - filed with commissioner, 3649.1g
 - fee, 3649.1i
 - term of, 3649.1i
 - unlawful without license, 3649.1f
 - repeals, 3649.1n

Department of Agriculture—Continued

- Hay dealers—continued
 - section 2443.3 not applicable to hay, 3649.1m
- Infested fruit, 3626
- Labeling of seeds, 3594
- Laboratory, grain inspection, 3597
- Licenses, wholesale butter and cheese
 - dealers, 2620.71
- Mustard seed, 3649.1a
 - enforcement of act, 3649.1b
 - duty of commissioner of agriculture, 3649.1b
 - fees for licenses, disposition of, 3649.1c
 - penalties for violations, 3649.1e
 - purchasers of crop before harvest, 3649.1a
 - license
 - bond for, 3649.1a
 - fees, 3649.1a
 - disposition of, 3649.1c
 - revocation, commissioner may make, 3649.1d
 - reports by licensees, 3649.1d
- Nursery stock, 3614
- Penalty for violations of act, 3596
- Scale inspection, 3575.2
 - fees, 3575.2
 - amount, 3575.2
- Sealer of weights and measures, 3575.3
 - bills and accounts of, 3575.3
 - presented to board of examiners, 3575.3
 - revolving fund, 3575.3
 - expenses paid from, 3575.3
- Seed products from farms, 3633.4
- Seeds, 3594
 - inspection of, 3597
 - labeling of, 3594
 - contents, 3594
 - mixtures, 3594
 - when exempt from act, 3595
 - Violations of act, penalty, 3596, 3649.1e
- Department of public welfare, created, 349A.1

Dependent ChildrenSee **Public Welfare**

- Dependent commensurate property, definition
 - of, 7364.29-2

Deposit InsuranceSee **Federal Deposit Insurance Corporation**

- Deposit, return of by registrar of motor
 - vehicles, 1754.19
- Deposit of funds, rural rehabilitation projects,
 - 349B.14
- Depositions under unemployment compensation
 - law, 3033.11
- Depots, assessment of, 2132

Deputy

- Drain commissioners, bonds of, 466
- Insurance commissioner, bond of, 464
- Registrar of state lands, bond of, 464
- Secretary of state, bond of, 464
- State auditor, bond of, 464
- State treasurer, bond of, 464
- Superintendent of public instruction, 933

Destruction of

- Electric lines, 2711.4
- Historic material, 1575.8

Determination of

- Joint rights, 7136
- Title to stream beds, 1805.51-14

Diplomas, junior colleges, 930.18

Director of

- Forest school, 877.2
- Grain inspection laboratory, 3597
 - employment of agents
 - salaries and expenses, 3598
 - makes rules and regulations, 3597
- State parks, state forester, 1871.3

Direct PrimarySee **Elections****Directors**See **Banks and Banking Corporations**

- Disability retirement benefit, retirement
 - system, teachers', 1132.6
- Disbursing officers, state, to make advances
 - on salaries, 442.1

DiseaseSee **Cosmetology and Hairdressing Occupational Disease****Dissolution**See **Corporations****Disposition of**

- Proceeds of sale, unredeemed property, 2235
- Property, rural electric associations, 6396.21
- Supreme court fees, 372

Display of store license, 2428.3

Dissolution of Corporations

- Directors become trustees, 6011
- Disposing of property, 6011
- Partial invalidity, 6011.1
- Property
 - action to determine ownership, 6011
 - attorneys' fees, 6011
 - decree, 6011
 - conveyance of by trustees, 6011
- Saving clause, 6011.1
- Stockholder, defined, 6011
- Transfer of property to new corporation, 6011
- Trustees
 - conveyance of property by, 6011
 - directors become, 6011
 - duties, 6011
 - fees, 6011
 - may sue and be sued, 6011
- Winding up its affairs, 6011

Dissolution, electric corporations, 6396.18

Dissolution of irrigation districts, 7264.20

Dissolution of Marriage, Divorce, 5736, 5736.1

Causes for divorce, 5736

insanity, insurable

notice of action served as court directs, 5736.1

parties to action, 5736.1

when grounds for divorce, 5736.1

Distribution of

Public reports, 521

Supreme court reports, 384

Distributor, milk control act, definition of, 2640.3

Distributors of gasoline, license tax, 2381.4a—2396.4

District Courts

Adjudication of water rights

procedure in, 7135.8

Appeal

from Montana liquor control board, 2815.188

from state grass conservation commission,
7364.29-8

Correction of errors, water decrees, 7189.1

Eminent domain, jurisdiction, 9939

Jurisdiction over violations of milk control
act, 2640.22

Modification of orders, water decrees, 7189.1

District high school boards, junior colleges, 930.9

District High SchoolsSee **High School Code**, 1262.14—1262.99g

District judges, drawing of jurors, 8903

DistrictsSee **High School Districts****Irrigation Districts****Soil Conservation Districts****Ditches**

Assessments of, 2138

Easement on state land, 1805.62

Division of Industrial Hygiene

Members, 2484.1

Occupational diseases

investigation of, 2484.4

reports

admissability on hearings under workmen's

compensation act, 2484.7

duty to make, 2484.3

failure to make, 2484.8

false statements in, 2484.8

penalties, 2484.8

physician to make, 2484.7

periodic reports

dissemination of, 2484.5

Secretary, 2484.1

Diversion of water, 7097.1

DivorceSee **Dissolution of Marriage, Divorce**

Causes for, 5736

incurable insanity, 5736.1

notice if action served as court directs, 5736.1

parties to action, 5736.1

Doctors of Medicine

Jury duty, exemption, 8893

Occupational diseases, report of, 2484.7

Ophthalmologists, 349A.57

Sanity hearings

attendance, 1433

compensation as witness, 1441

Domestic building and loan association, corporation

license tax exemptions, 2296

Domestic corporations, service of summons

on, 9111

Dominion of Canada, motor vehicle offenses

in, 1754.12

Donation to the blind, 1473.14

Dormitories, high school, bonds issued for, 1262.32-1

Dower of insane person, 10416

Drainage districts, 7364.7—7364.29

Drain commissioners, bond of, 466

Dramatic-Musical CompositionsSee **Protection of Copyrights**

Drawing and summoning jurors for courts of

record, 8903, 8904

Driver's DutiesSee **Accidents****Driver's License**See **Automobiles****Driver's of Motor Vehicles**

License

age to acquire, 1741.11

required, 1741.11

Operating records of, 1754.16

Reports, inability to make, 1754.36

Driving

Under the influence of drugs, 1741.7

Under the influence of intoxicating

liquor, 1741.7, 1754.12

With more than three in front seat, 1741.7

Without rear view mirror, 1741.7

Without windshield wiper, 1741.7

Driving Motor VehiclesSee **Reckless Driving**

Druggists, exempt from jury duty, 8893

DrugsSee **Uniform Drug Act**

Drugs, driving under the influence of, 1741.7

Drunken driving, 1741.7, 1754.12

Dyer act offenders, highway patrolmen to

arrest, when, 1741.9

EEarnable compensation, definition of, retirement
system, teachers, 1132.1

Earnings, exemptions, 9429

Easements

- For public purposes, granting of, 1805.58—1805.63-1
- On state lands, 1805.61—1805.63
 - application for, 1805.61
 - contents of, 1805.61
 - to whom made, 1805.61
- board report, 1805.61
- certificate of purchase contract, lands under, 1805.61
- compensation and damages, 1805.61
 - determination of, 1805.61
- copies, 1805.61
- damages, 1805.63
 - how ascertained, 1805.61
- deeds, 1805.61
- ditches, 1805.62
- filing, 1805.61
- leased lands, 1805.63
 - notice, 1805.63
- official plat, 1805.61
- private road, 1805.62
- proof of settlement, 1805.63
- public highway, 1805.62
- purposes, 1805.62
- railroad, 1805.62
- removal of fences, 1805.63
- reservoir, 1805.62
- street, 1805.62
- telegraph line, 1805.62
- telephone line, 1805.62
- to whom made, 1805.61
- viewing purposed easements, 1805.61

Editors, exempt from jury duty, 8893

Education

See **World War Orphans' Education Fund**

Education, Board of

See **State Board of Education**

Education, Vocational

See **State Board of Vocational Education**

State Vocational School for Girls

Educational organizations, corporation license tax, exemptions, 2296

Effect of recording, or failure to record, instruments, 6935

Eggs

See **Dairy Products**

- Candling of, 2634.5
- Dealer's license, 2634.1
- Grader's license, revocation, 2634.14
- Imported, labeling of, 2634.7
- Invoice to show grade of, 2634.9
- Montana state egg seal, 2634.12
- Notice of grade of, 2634.8

Election

See **Abandonment of Counties**

Election Judges

See **Compensation**

Judges of Election**Election Officers**

See **Counties**

Election Registration

See **Change of Residence**
Conviction

Elections

See also **Initiative and Referendum**

Ballots

- preparation of, 681
- putting in box, duty of judge, 700

Conduct of, 689.1

Contest of, local option, 2815.198

Corporation dissolution, rural electric associations, 6396.18

Counties, abandonment of, 4426.5

Direct primary, 654, 662

- abstract of votes, 654

- ballots, printing, 662

- candidates, names, 662

- printing on ballots, 662

- city central committee, 662

- chairman, 662

- committeemen, 662

- county and city central committeemen, 662

- county and precinct officers, 654

- county central committee, 662

- county clerk's duties, 654

- returns

- canvass of, 654

- tie decided by lot, 654

Election day, liquor stores closed, 2815.75

Hours of polling, 689.1

Initiative and rederendum

- ballots

- manner of voting, 104

- sample ballots, 104

Junior colleges, 930.11

Local option, 2815.199

- second election, 2815.199

Officers, Montana state board of food

- distributors, 2599.5

Public works under emergency relief act, 3033.26

Recount of votes, 828.1

- calling in other judge, 828.3

- determination of, 828.1

- hearing, 828.1

- order for recount, 828.1

- procedure of, 828.4

Returns, 782—783

- ballot box, return of, 782

- by judges, 782

- delivery to district court clerk, 782

- envelopes, signing, 782

- how made, 782

Special elections, 689.1

State highway treasury anticipation debenture act of 1938, 2381.4a

Elections—Continued

- Supplies, printing of, under county contract, 4482.16
- Voting, manner of, 700

Elector's Registration

See **Cancellation of
County Clerk**

Electors

- Registration of, 555—583.1
 - books, closing of, 561
 - cancellation of registry cards, 570
 - method of cancellation, 570
 - notice, 570
 - order of court, 570
 - re-registration, 570
 - when, 570
 - change of residence to another county, 561
 - deputy registrars, 557
 - appointment of, 557
 - compensation of, 557
 - failure to vote, 562
 - false impersonation, 555
 - list compared with precinct poll book, 562.1
 - re-registration, 562
 - violations, 583.1
 - voting by absent voter's ballot, 562
- To approve junior colleges, 930.12

Electrical Construction, 2707.1—2711.4

- Conflicting construction rules, 2707.2
- Interference with
 - electric wires, 2711.1
 - lines, 2711.4
- National electric safety code, 2707.1
- Rural electrification projects, 2707.1
- Violations of act, penalties, 2707.3

Electrical Energy Producers' License Tax,

- 2343.1—2343.3
- Amount, 2343.1
- Delinquency, 2343.3
- Distribution, 2343.3
- Interest, 2343.3
- Monthly statement of sales, 2343.1
- State general fund, deposit in, 2343.1a

Electric Associations

See **Rural Electric Associations**

Electric Cooperative Act

See **Rural Electric Cooperative Act**

- Electric cooperative act, rural, 6396.1—6396.31
- Electric lines extending into state, 6396.26

Electric Power Lines

See **Assessment of**

- Electric power line companies, assessment of for taxation, see **Taxation**, 2138—2146
- Electric wires, interference with, 2711.1

Eligibility

- For assistance, dependent children, 349A.49
- Requirements for old age assistance, 349A.36

Elementary agriculture, course of study, 1054

Elementary school teachers, retirement of, 1132.4

Elevators

See **Grain Elevators**

Elk, report killing of, 3685

Embalmers, exempt from jury duty, 8893

Emergency Expenditures

See **Board of Examiners**

Emergency Relief Employment, 335.17-1—335.17-7

- Emergency clause, 335.17-7
- Emergency relief fund, 335.17-3
 - creation, source, use, 335.17-3
 - petition opposing projects, 335.17-4
- Emergency relief warrants, notice of, 335.17-4
- Expiration of act, 335.17-7
- Federal funds, use of, 335.17-1
- Federal government, cooperation with, 335.17-1
- Fund, emergency relief, 335.17-3
 - anticipatory warrants, may issue, 335.17-3
 - creation of, 335.17-3
 - source of, 335.17-3
 - used to pay outstanding warrants, 335.17-3
- Levy of tax, 335.17-4
- Materials, etc., furnished for relief
 - projects, 335.17-2
- Municipality to issue warrants, 335.17-2
- Partial invalidity of act, 335.17-6
- Political subdivisions of state, 335.17-2
 - governing bodies levy taxes, 335.17-4
 - limitations upon, 335.17-4
 - tax levy, limitations upon not to apply, 335.17-4
 - warrants not to issue if opposing
 - petition filed, 335.17-4
 - warrants, intention to issue advertised
 - 30 days, 335.17-4
- Public policy, 335.17-1
- Referendum, act not subject to, 335.17-7
- Relief projects, 335.17-2
 - furnishing materials, etc., 335.17-2
 - warrants issued to pay for, 335.17-2
- Saving clause, 335.17-6
- School districts to issue warrants, 335.17-2
- State funds, use of, 335.17-1
- State land commissioners
 - may purchase warrants, 335.17-5
 - require certificate of secretary of water conservation board, 335.17-5
 - contents of, 335.17-5
- Warrants issued in payment of materials, etc., 335.17-2

Eminent Domain

- Jurisdiction of district court, 9939
- State water conservation board, 7196.1
- Stock lanes, 1651.3

EmployeesSee **County Jail**

Milk control board, 2640.4

Rural electric associations, 6396.11

Employer

Coverage under unemployment compensation law, 3033.8

Definition of, retirement system, teachers, 1132.1

Engaged in hazardous industries, 2841

Under unemployment compensation act, to post regulations, 3033.6

EmploymentSee **State Employment Service****Employment of Soldiers and Sailors, 5653**Preference of, in public employment, 5653
citizens over foreigners, 5653
disabled veterans, when employed, 5653
on public works, 5653

Refused, when, 5653

petition the district court, 5653

procedure, 5653

Residence a prerequisite, 5653

Employment ReliefSee **Emergency Relief Employment, 335.17-1—335.17-7****Enabling Act, Amendment**See **Montana Territory**

Endorsement on warrants, rural rehabilitation projects, 349B.12

Enforcement of laws pertaining to children, state department of public welfare, 349A.72

EngineerSee **State Engineer**

Engines, spark arresters required, when, 1840.18

Equalization, Board ofSee **State Board of Equalization**

Equalization fund, schools, 1200.4

Equipment

For highway patrolmen, 1741.6

Vocational training centers, 1262.99g

Established place of business, definition of, 2429.25

Estates, Claims Against, 10178

Limitation of action, 10178

Rejected claims, 10178

Evaporation of gasoline, deduction for, 2381.4i

Evidence

Business records, admissability of, 10598.2

Official reports

copy to adverse party, 10576.2

cross examination on, 10576.3

state officers', 10576.1

Reckless driving, 1742.5

Threats, 10915.23

ExaminationSee **Cosmetology and Hairdressing**

Examination of state lands, bureau of mines, 884

ExaminerSee **State Examiner****Examiners**See **Board of****Examiners, Board of**See **Capitol Refunding Bonds**

Examiners, state, 214, 215, 219

Exceptions, ruling on, 9390

Excessive noises, cutouts, 1741.7

Excessive loads, motor vehicles, 1751.5

Excess size and weights, permits for, 1751.6

Exchange of state lands, 1805.19a

Exchange of unredeemed property for bonds, sale of unredeemed property by county commissioners, 2235

Excise Tax

Exemption from, rural electric associations, 6396.28

Liquor, 2815.178

Execution, 9428.1—9444.11

Certificate of redemption, 9444

Debts incurred for necessities, 9429

Exemptions

chiropractors, 9428.1

earnings, 9429

osteopaths, 9428.1

teachers' retirement benefit, 1132.13

Manner of redeeming, 9444

Mortgages, redemption of, 9444.1

Motor vehicle act, 1754.15

Redeeming from wife, 9444

Redemptioners rights, 9444

Redemption money, 9443

Sale, transfer of title to motor vehicle, 1758.2

Executive powers, inactive accounts, transfer to general funds, 5035.1

Executors

Non-resident aliens, 7090.3

Oaths and bonds of, 10088—10106.3

Transfer of title to motor vehicle by, 1758.2

Executors and AdministratorsSee **Bonds**

Bonds

additional, when required, 10089

excessive, 10106.1

form, 10088

new bond, liability of former surety, 10106.3

reduction of, 10106.1

order for, 10106.2

sureties, 10088

when dispensed with, 10089

Claims, rejection of, 10178

Curative deeds, 10279.9

Executors and Administrators—Continued

- Personal property, sale of, 10204
- Real property
 - conveyance of, 10269, 10279.9
 - sales, validation of, 10279.9

Exemplary damages, 8666

Exemptions

- Earnings, 9429
- Jurors, 8890—8895

Ex-Officio Fire Wardens

- Employees of state forester, 1840.25
- Montana state board of forestry, member of, 1840.25
- State forester, 1840.25

Expenditures

See **County Budget**

Expense fund, teachers' retirement system, 1132.8

Expenses

See **Salaries, Fees, Expenses, and Mileage**

Expenses, traveling, blind aid patients, 349A.64

Experimental Station

See **Montana State University**

Experimental station, state forest, 877.1

Express agents, exempt from jury duty, 8893

Extradition

See **Criminal Law**

Extradition, uniform criminal extradition act, 12428.1—12428.30

Eye doctor, ophthalmologist, defined, 349A.56

F**Factories**

See **Dairy Products**

Failure of title, leasing of state lands, 1805.51-12

Failure To

- Drive on right side of highway, 1741.7
- Obey highway patrolmen, 1741.7
- Observe signs, 1741.7
- Record instruments, 6935
- Vote, 562

Fair practice act, construction of, 10915.14

Fair Trade Act, 7590.1—7590.9

- Closing out stock, 7590.5
- Contracts, 7590.2
 - exempt, 7580.7
- Damaged goods, 7590.5
- Definitions
 - commodity, 7590.1
 - person, 7590.1
 - producer, 7590.1
 - retailer, 7590.1
 - wholesaler, 7590.1

Fair Trade Act—Continued

- Knowledge of contract, 7590.6
- Minimum resale price of merchandise, 7590.2
 - when not binding, 7590.5
 - who may establish, 7590.4
 - violations, 7590.3
- Removal of trade mark, 7590.5
- Saving clause, 7590.8
- Title, 7590.9
- Unfair competition, 7590.6

False Impersonation

See **Crimes**

False impersonation, registration of electors, 555

Federal Agencies, Cooperation With

- Park commission, 1871.8
- State board of forestry, 1840.5

Federal Aid

- Dependent children, 349A.53
- To blind, 1473.15

Federal Deposit Insurance Corporation

- Assets of closed bank, sale to corporation, 6018.8
 - court order authorizing, 6018.8
- Banks may
 - contract with, 6018.4
 - subscribe for stock of, 6018.4
- Closed bank
 - corporation may be appointed agent, 6018.5
 - corporation subrogated to rights of, 6018.6
 - superintendent may borrow from corporation and pledge assets, 6018.8
- Contract with, by banks, 6018.4
- Definition of banking institutions, 6018.3
- Examination of banks by, superintendent may accept, 6018.7
- Power of banks or superintendent to sell or pledge assets not limited by act, 6018.8

Federal Funds

- Journalism building, state university, 877.7
- State treasurer to receive, 349A.79

Federal Government, Cooperation with

- Concerning emergency relief employment, 335.17-1
- State commission for the blind, 1473.7

Federal highway grants, state highway fund, matching of, 2381.4n

Federal Social Security Act 1935

See **Public Welfare Act, 349A.74**

Federal social security board, rules binding on welfare departments, 349A.35

Federal standard highway requirements, 2396.3

Federal statute for preservation of antiquities, 1575.7

Fees

See **Salaries, Fees, Expenses, and Mileage**

- Rural electric associations, 6396.27
- Supreme court, 372
 - admission of attorney, 372

Fees—Continued

- Supreme court—continued
 - of appellant, 372
 - of respondent, 372
 - transcripts, 372
 - writ, 372

Felonies

- Conviction, cancellation of registration, 570
- False impersonation, registration of electors, 555
- Judges of elections, violation of duties, 700
- Sale of liquor without license, 2815.181

Fertilizers, Commercial**See Regulation of**

- Field experimental stations, forests, 877.3
- Filing with secretary of state, agreements, rural rehabilitation, 349A.4

Finances**See County Finances, Bonds, and Warrants**

- Financial aid of dependent children, 10480—10487

Financial Institutions**See Banks and Banking**

- Financial responsibility, motor vehicle act, 1754.12, 1754.14, 1754.17
- Financing agreements in sale of motor vehicles, 10915.20—10915.25

Fines

- Motor vehicle act, 1754.22
- Under uniform drug act, lien on real estate, 3202.29

Fire Damp**See Coal Mining Regulations****Fire Department****See Municipal Corporations****Fire Department, Firemen's Disability Fund,**

5109—5138.2

- Act of 1939
 - act passed in exercise of police power, 5109.1
 - effective date of act, 5109.1
 - violation of, a misdemeanor, penalty, 5110.4
- Cities and towns must have, 5109
- Council of cities and towns
 - have charge and supervision over, 5109
 - provide by ordinance for government of, 5109
- Disability and pension fund, 5118
 - maintainance by special tax, 5119
 - what it consists of, 5118
- Disability pension, 5133
 - amount of, limitation on, 5133
 - firemen not entitled to while receiving workmen's compensation, 5133
 - volunteer firemen, amount limited, 5133
- Eight-hour shifts
 - cities of first class, 5138.1
 - cities of second class, 5138.2

Fire Department, Firemen's Disability Fund—Cont.

- Eight-hour shifts—continued
 - cities of the first class
 - days off duty, 5138.1
 - wages, 5110.1
 - minimum wage, 5110.1
 - yearly increase, 5110.1
 - cities of second class
 - days off duty, 5138.2
 - wages, 5110.3
 - minimum wage, 5110.3
 - yearly increase, 5110.3
 - probationary period, 5110.3
- Penalty for violations, 5110.2
- Pensions to retired firemen, 5132
 - limitation on amount of, 5132
- orphans, 5134
 - payment cease at 18 years of age, 5134
- widows and orphans, 5134
 - amount, 5134
 - change, association may, 5134
 - Not entitled to, when, 5134
- Platoons
 - cities of the first class, 5138.1
 - cities of second class, 5138.2
- Violations of act a misdemeanor, penalty, 5110.2
- Volunteer fire department
 - cities of second class may make provision for, 5116.2
 - compensation, 5116.2
 - definition of volunteer fireman, 5116.2
 - duties of members, 5116.2
 - exempt from provisions of act, 5116.2
 - members eligible as trustees of fire department relief association, 5116.2
 - pension, members not entitled to, 5116.2
 - service under supervision of chief of paid department, 5116.3

Firemen's Disability Fund**See Fire Department, Firemen's Disability Fund**

- Fire districts, creation of, 1840.5

- Fire marshal, bond of, 464

Fire Protection**See Forest Fire Protection****Fires****See Camp Fires****Forest Fires****Fire Season****See Forest Fire Season**

- Fires within forest lands, permits, 1840.16

Fire Wardens**See Ex-Officio Fire Wardens****Fire Wardens, Ex-Officio, 1840.25**

- Deputy game wardens, 1840.25
- Montana highway patrol, 1840.25
- Officers national park service, 1840.25
- United States forest service officers, 1840.25

Fiscal year, general reports of officers, 520, 521

Fish and Game

- Aliens, license fee for, 3685
- Big game hunting, 3778.9
 - costume of hunter, 3778.9
- Bounty fund, transfer from fish and game fund to, 3685
- Carcasses, tagging of, 3685
- Closed districts, 3676
- Closed seasons, 3676
- Commission creates preserves, refuges, rest grounds, etc., and establishes closed seasons, 3676
- Deer, report killing of, 3685
- Elk, report killing of, 3685
- Funds remitted to state treasurer, credited to fish and game fund, 3685
- Game preserves created, 3676
- Game refuges created, 3676
- Licenses, 3685
 - classes of, 3685
 - fees, 3685
 - non-resident, 3685.3
 - class BB, 3685.3
 - fee, 3685.3
 - powers under, 3685
- Little Saint Joe game preserve, 3776.7
 - territory included, 3776.7
- Penalties for violations, 3778.10
 - transporting, possessing or disposing of animals of parts of, without permit, 3742
 - exceptions, 3742
- Possession or disposal of animals or parts of animals unlawful except under permit, 3742
 - resident citizens, defined, 3685
- Rest grounds, 3676
- Sanctuaries, 3676
- Transport of animals, unlawful without permit, 3742

- Fish and game laws, commission and warden, 3676
- Fixtures upon highway, accidents, 1754.33
- Flags or flares used, when, 1741.7

Floating Indebtedness

See **County Finances, Bonds and Warrants**

- Flumes, assessment of, 2138
- Flying of aircraft, lawfulness of, 2736.7

Food

See **Food Distributors' Law**
Montana State Board of Food Distributors
County Attorney

Food Distributors Board

See **Attorney General**

Food Distributors' Law of 1939, 2599.1—2599.18

- Construction, 2599.1
- Definitions
 - board, 2599.1
 - food, 2599.1
 - food distributors, 2599.1

Food Distributors' Law of 1939—Continued

- Definitions—continued
 - food store, 2599.1
 - person, 2599.1
 - secretary, 2599.1
- Foods, adulterated, 2599.12
- Food stores
 - licenses, 2599.10
 - fee, 2599.10
 - posting, 2599.16
 - required, 2599.10
 - revocation
 - appeal, 2599.11
 - hearing, 2599.11
 - suspension, 2599.11
 - quality of food sold, 2599.12
 - registration of, 2599.10
 - Title of act, 2599.18
- Forced landings, liability for damages, 2736.7
- Foreclosure of lien, motor vehicle act, 1754.15

Foreign Corporations

See **Corporations**

- Charter
 - amendment, 6651
 - copy of to be filed, 6651
- Exemptions from act, 6651
- Extending lines into state, 6396.26
- Penalties under act, 6651
- Requirements to do business, 6651
- Secretary of state, filing charter with, 6651
- Service of summons on, 9111
- Statement required to be filed, 6651

- Foreign countries, no judicial notice of laws, 10532.5
- Foreign states, motor vehicle offenses in, 1754.12
- Foreign wills, recording of, 10039

Forest and Conservation Experimental Station See **Montana State University**

- Forest areas, classification of, 1840.5
- Foresters' cooperative work fund, 1840.23

Forester, State

- Office, 1840.26
- Powers and duties, 1840.26
- Sources of revenue, 1840.23
- Disposition, 1840.23
- Disbursement, 1840.24

Forest fire act, applicability of, 1840.4

Forest Fire Protection, 1840.11—1840.21, 2763—2778.4

- Assessments
 - amounts due on as lien, 1840.11
 - collection, 1840.11
 - delinquencies, foreclosure, 1840.13
 - payment under protest, 1840.12
- Cost of, 1840.11
- Fines collected, 1840.21
- Fire wardens ex-officio, district officers, 1840.25
- Precautions during fire season, 1840.17
- Setting fires, 1840.14

Forest Fire Season

- Definition of, 1840.3
- Spark arresters required, 1840.18

Forest Fires

- Land owner's liable, 1840.4
- Permissible fires
 - camp fires, 1840.15
 - debris-burning fires, etc., permit, 1840.14
- Responsibility, 1840.4

Forest Lands**See Owner of Forest Lands**

- Camp fires within, 1840.15
- Fires within, permits, 1840.16
- Owners of, delinquencies, 1840.11
- Spark arresters required, 1840.18

Forest protection, definition of, 1840.1

Forestry

- Act
 - forest protection, 1840.28
 - penalties under, 1840.27
 - purposes, 1840.28
 - saving clause, 1840.29
 - taxes, 1840.28
 - violations, 1840.27
- Lands
 - owners of, duties, 1840.9
 - state to pay assessments, 1840.8
- School, personnel, 877.5
- State board of, 1840.1—1842

Forestry, Board of

See Montana State Board of Forestry
State Board of Forestry

Forests**See State Forests****State Parks and Forests**

- Acquisition of land, 1842.4
- Board of land commissioners, authority, 1842.4
- Development of, 1842.5
- Expenditures, 1842.5
- Obligations, 1842.7
- Products, sale, 1842.5
- Revenues, 1842.6
- Rules and regulations, 1842.5
- State forest experimental station, 877.3
- Statistics, 877.3

Forests and state parks, 1842.4—1842.8

Forfeiture of office, violation of registration act, 583.1

Forgery under motor vehicle act, 1754.22

Formation of the jury, 9334—9341

Forms

- Accidents reports, 1754.37
- Ballots, 681
- Corporation acknowledgments, 6915

Forms—Continued

- Insanity affidavits, 1431
- Itinerant merchant license, 2429.31
- Lease of state lands, application, 1805.51-6
- Liquor stores, records and returns, 2815.185
- Local option ballots, 2815.195
- Licenses, movie theater, 2439.2
- State highway treasury anticipation
 - debenture bonds, 2381.4b
- State insane asylum, bond issue, ballot, 1444h
- Store license, application for, 2428.1
- Tax certificates, 2207
- Warrant of apprehension, 1431
- Warrants, returns showing service of, 1431

Formulas, motor vehicle loading, 1751.4

Franchise of railroads, assessment of, 2132

Fraternal Benefit

- Lodges, corporation license tax exemptions, 2296
- Orders, corporation license tax exemptions, 2296
- Societies, corporation license tax exemptions, 2296

Fraternal organizations, exempt from gambling act, 11159.2

Fraud, protection against, teachers' retirement benefit, 1132.14

Fraudulent acts, old age pensions, 349A.15

French ice cream, definition of, 2620.4

Frightening of livestock, aircraft, 2736.7

Front seat, overcrowding of, 1741.7

Fruit ice cream, definition of, 2620.4

Fruit, Infested

- Evidence of, 3626
- Illegal to sell, 3626

Fruit trees, removal of infected, 3617

Full market value, definition of, 1805.51-1

Fund, definition of, rural rehabilitation projects, 349B.6

Funds**See Cemetery Associations****Cities****Dairy Products****Federal Funds****General Fund****State Institutional Funds**

Public welfare, transfer of from specific accounts, 349A.82

Rural rehabilitation projects, where deposited, 349B.14

Sinking funds, investment of, 4622.1

Unemployment compensation fund
establishment and control, 3033.9
special administration fund, 3033.13

Funeral Expenses**See Board of County Commissioners**

Funeral expenses, old age relief, 349A.41

G**Gambling Act****See Charitable Organizations****Games permitted**

trade stimulators, 11159

license

application, 11159.1

expiration, 11159.1

fees, 11159

disposition of, 11159.1

Games prohibited, 11159**Exemptions from act**

charitable, fraternal, and religious

organizations, 11159.2

private homes, 11159.2

Game**See Fish and Game****Game preserve, Little Saint Joe, 3776.7****Game Wardens****Bonds, 464****Fire wardens, ex-officio, 1840.25****Garages to report accidents, 1754.39****Garnishment, teachers' retirement benefit exempt from, 1132.13****Gas****See Oil and Gas****Gas Leases, 1805.51-10****Release of, 6893****Gas, Natural****See Oil and Natural Gas Conservation Board****Gasoline****Dealers' and distributors' license tax,****2381.4a—2396.4****Distributing plants, special license tax, 2428.6****Filling stations**

exempt from store license, 2428.5

special license tax, 2428.6

License tax

debentures, 2381.4i

drawback fund, 2396.4

Tax

amount of, 2381.4i

refund, 2396.4

aircraft, 2396.4

motor boats, 2396.4

permit, 2396.4

state board of equalization to
investigate, 2396.4

stationary gas engines, 2396.4

tractors, 2396.4

Gems, definition of, 1805.51-1**General elections, ballots, 681****General Fund****Appropriation to, 2343.3****Excise tax, liquor, 2815.178****Movie theater license fees to, 2439.7****General welfare, old age assistance, county
share participation, 349A.39****General regulations of business of railroads
6600, 6601****General Relief****See Public Welfare, 349A.1—349A.82****General report of officers, 520****Geography, course of study, 1054****Geology and mines, bureau of, 884****Gifts****See Cemetery Associations****Commission for the Blind****Gifts, income tax, 2295.7****Gifts to the blind, 1473.14****Glacier national park, conveyance of minerals
to United States, 1805.65-1****Governing body, definition of, rural rehabilitation
projects, 349B.6****Governor****Employees, approval of appointment, 273.3
power to remove, 273.2****Food distributors, to appoint board of, 2599.3****Milk control board, to appoint, 2640.4****Public reports, to receive, 521****Referendum vote, proclamation, 2155c****Reports to, 1871.9****School for the deaf and blind, to appoint
local executive board, 1473.2****State commission for the blind, to appoint, 1473.6****State grass conservation commission,
appointment, 7364.29-3****State highway land sold, to execute deeds, 1797.2****State park commission, appointment, 1871.2****Vehicles in the service of, 1757.1****Governor's Proclamation****See Abandonment of Counties****Grades and courses of study in public
schools, 1054****Grain Elevators****Exempt from store license, 2428.5****Special license tax, 2428.6****Grain inspector, bond of, 464****Grammar, course of study, 1054****Grand jury defined, 8885****Granges, incorporation of, 6453****Granting of easements for public purposes,
1805.58—1805.63-1****Grants to the blind, 1473.14****Grass Conservation Act, 7364.29-1—7364.29-31****Cooperation with federal agencies, 7364.29-1
Definitions**

animal unit, 7364.29-2

assessment, 7364.29-2

commensurate property, 7364.29-2

commission, 7364.29-2

dependent commensurate property, 7364.29-2

Grass Conservation Act—Continued

Definitions—continued

- grazing preference, 7364.29-2
- permits, 7364.29-2
- person, 7364.29-2
- range, 7364.29-2
- secretary, 7364.29-2
- state district, 7364.29-2
- Grazing district, 7364.29-1
- incorporation, 7364.29-1
- Purposes of act, 7364.29-1
- State grass conservation commission, 7364.29-1
- Title of act, 7364.29-1

Grass Conservation CooperationSee **County Commissioners****Grazing**

- Associations, to amend by-laws, 7364.29-18
- Districts, 7364.29-1
- Fees, 7364.29-22
- Lands, state, leasing of, 1805.21—1805.32
- Preference, definition of, 7364.29-2

Grazing DistrictsSee **State Grazing Districts**

Great Falls, school for the deaf and blind, 1473.2

Gross income, income tax, 2295.7

Gross weights of motor vehicles, 1751.4

Guarantee by state, teachers' retirement fund, 1132.16

Guardian

- Blind persons, appointment of, 349A.68
- Insane and incompetent persons, 10416, 10416.1
- Minors
 - bond, when dispensed with, 10408.1
- Old age relief recipient, appointment for, 349A.42
- Workman's compensation act, appointment by court under, 2900

Guardianship proceedings, insane person, 1444

H**Hail Insurance**See **Mutual Hail Insurance****Hairdressing**See **Cosmetology and Hairdressing****Hawkers**See **Itinerant Merchants****Hay Dealers**

- False representations as to quality, 3649.1k
- Inspection of hay, 3649.1k
- License, 3649.1f
 - bond
 - amount of, 3649.1h
 - filed with commissioner, 3649.1g
 - fee, 3649.1i
 - necessity, 3649.1f

Hay Dealers—Continued

License—continued

- rules and regulations, 3649.1j
- term of, 3649.1i
- Repeals, 3649.1n
- Section 2443.3 not applicable to hay, 3649.1m

Health, Board ofSee **State Board of Health****Hearings**

- Election contests
 - recount of votes, 828.1
- Milk control board, 2640.20

Height of motor vehicles, 1751.2

HidesSee **Butchers and Meat Peddlers****Hides of Slaughtered Cattle, Regulations, Etc.**

- Bills of sale
 - buyers to procure, 3350.1
 - contents, 3350.1
 - falsifying, a misdemeanor, 3350.2
 - form of, 3350.1
- Buyer defined, 3350.7
- Inspection
 - Certificate of, 3350.1
 - filed in office of clerk and recorder, 3350.1
 - fee, 3350.9a
 - submitting hides to sheriff for, 3350.1
 - tags, to be on purchased hides, 3350.10
- License fees, dealers and buyers, 3350.8
 - deposited in county general fund, 3350.8
- Purchases, records of, 3350.1
- Repeals, 3350.15
- Sales in county where seller does not reside, 3350.1
- Seals to be affixed to hides
 - buyers to procure, 3350.1
- Shipment
 - in car or truck load lots, 3350.11
 - Unlawful to transport uninspected or untagged hides, 3350.11
- Violation of act, penalty, 3350.12a

High School BondsSee **Buildings**

- Form, 1262.14
- Limit of, 1262.14
- Rate of interest, 1262.14

High School Budgets

- Adoption, 1263.8
- Apportionment per pupil
 - limitation on, 1263.5
 - maximum, 1263.5
- Approval, 1263.8
- Final budget, 1263.8
- Meetings, 1263.5
 - tax payer may appear at, 1263.5

High School Budgets—Continued

- Budgeting for
 - students in state institutions, 1263.8
 - students outside county, 1263.8
- Computation of, 1263.5

High School Code, 1262.14—1262.99g

- Apportionments, transfer of, 1262.81
- Attendance
 - high school in adjoining county, 1262.44-A
 - school in another state, 1262.44-A
 - students in another county, 1262.99d
- Board of trustees, 1262.83
 - dormitories may be erected and operated, 1262.83
 - high schools, 1262.83
 - powers of, 1262.83
 - records of acts, 1262.83
 - powers and duties of
 - construction of building necessary for school purposes, 1262.83
 - elections must be called to pass on certain expenditures, 1262.83
 - make contracts, 1262.83
 - limitation on the amounts involved, 1262.83
 - purchase and sell real estate, 1262.83
 - salaries, fixing, 1262.83
 - public meetings of electors called in certain cases, 1262.83
 - appeal to courts from decisions of board, 1262.83
 - transfer of students, duty to pay for, 1262.44-A
- Bonds
 - limit, 1262.14
 - school buildings, 1262.34-1
 - school dormitories, 1262.34-1
- Dormitories, maintenance of, 1262.83
- Principals, employment of, 1262.83
- School districts to establish high schools, 1262.37
- Students out of district, transfer of, 1262.37
- Superintendents, employment of, 1262.83
- Teachers, employment of, 1262.83
- Text books, 1262.83

Vocational training

- attendance, 1262.99d
- branches of, 1262.99b
- centers, 1262.99a
 - adult education, 1262.99f
 - equipment, 1262.99g
 - tuition fees, 1262.99f
- eligibility, 1262.99c

High School Districts

- Board of trustees, 1301.1
- Common school districts grouped for, 1301.2
- Counties divided into districts
 - procedure for, 1301.2
- County high schools, 1301.1
 - board of trustees, 1301.1
 - construction of public works by, 1301.1

High School Districts—Continued

- Public works, 1301.1, 1301.2
 - construction of, 1301.1
 - procedure, 1301.1
 - counties divided into districts, 1301.2

High School Dormitories**See Buildings**

High school supervisor, 933

High Schools**See Board of Trustees****Bonds****Budget****High School Code**

High school teachers, retirement of, 1132.4

Highway assistant supervisors, 1741.5

Highway Commission**Airports**

- construction
 - commission to assist in, 1800.1
 - loan of machinery, equipment, and services, 1800.1
 - emergency, declaration of, 1800.2
 - highways to municipal airports, 1800.1
- Lands not needed for highways, 1797.1
 - commission may sell, 1797.1
 - deeds, reservations in, 1797.2
 - procedure, 1797.1

Highway Patrol**See Montana Highway Patrol**

Highway patrol, vehicles in the service of, marking and lettering, 1757.1

Highway Patrol Board

- Definition of, 1741.11-1
- To furnish equipment for patrolmen, 1741.6

Highway Patrolmen, 1741.5

- Discharge of, 1741.5-1
- Equipment for, 1741.6
- Excessive loads, removal of, 1751.5
- Failure to obey, 1751.7
- Fire wardens, ex-officio, 1840.25
- Qualifications of, 1741.5

Highway supervisor, 1741.4

Highways**See County Finances, Bonds and Warrants****State Highways**

- Alteration of, 1651.1—1651.4
- Bonds may issue to acquire rights of way and construct, 4630.1
- Establishment, 1651.1—1651.4
- Land not needed for, 1797.1
- Restriction on use of, 1751.7
- Special road districts, 1652—1675.2
- Speed and traffic regulations, 1742.1—1754.6
- State parks, 1871.7
- Stock lanes, 1651.1—1651.4
- Striking fixtures upon, 1754.33
- Use of, non-resident, 1760.11
- Vacating, 1651.1—1651.4

Hills, passing on, 1741.7

Historical library at Helena, librarian of, member of science commission, 1575.3

Historical Materials, Destruction

See **County Attorney**

Historical sites, control of, 1871.4

Historical Society of Montana

Depository for museum collections, 1575.6

Historical structures, 1575.4

Historic resources of state, state park commission to preserve, 1871.4

Historic ruins, destruction of, 1575.8

History of Montana, course of study, 1054

Holding companies, corporation license tax, 2296

Holidays, liquor stores closed, 2815.75

Homesteads

Land within town or city, 6968

Quantity of land, 6968

Selection of, 6968

Value of, 6968

Homocide, operation of motor vehicle, 1754.12

Honors and degrees, 836.a

Horses

See **Inspection of Horses and Cattle Removed from State**

Horticultural organizations, corporation license tax exemptions, 2296

Hospital employees, exempt from jury duty, 8893

Hospitals

Incorporation of, 6453

Treatment for blind, state department of public welfare to designate, 349A.64

Hours of Labor, 3083.6, 3083.7

Arrangement of, 3083.6

Restaurants and eating places, 3083.6

exception, 3083.6

limitation of, 3083.6

Violations of act, penalty, 3083.7

House Officers and Employees

See **Legislative Assembly**

Housing Authorities Law

Home owners' loan corporation bonds authorized, 5309.35

banks may invest in, 5309.35

building and loan associations may invest in, 5309.35

fiduciaries may invest, 5309.35

insurance companies may invest in, 5309.35

Hucksters' licenses, 2429.10

Husbandry granges, incorporation of, 6453

Hygiene

See **Division of Industrial Hygiene**

Hygiene, course of study, 1054

I

Ice cream, definition of, 2620.4

Ice cream factories, location of, 2620.20

Ice cream factory, definition of, 2620.4

Ice cream mix, definition of, 2620.4

Ice cream mix factories, location of, 2620.20

Ice cream mix factory, definition of, 2620.4

Ice sherbets, definition of, 2620.4

Illegal contracts, 10915.9

Illegally collected taxes, 2222

Illegal seizure and levy upon property, 10921

Imported eggs, labeling of, 2634.7

Imprest fund, state department of public welfare, 349A.81

Imprisonment

See **County Jail**

Improper Driving

See **Automobiles**

Improper lights on vehicles, 1741.7

Improperly lighted bicycles, 1741.7

Improvements, definition of, 1996

Improvement Districts

See **Rural Improvement Districts**

Special Improvement Districts

Incest

See **Crimes**

Incest, 11030

Income tax, 2295.7

Income tax auditor, bond of, 464

Incompetent persons, service of summons on, 9111

Incompetents

Exception as to period of limitation under workman's compensation act, 2900

Widow

dower right of, 10416

mortgage of, 10416.1

Incorporation

See **Articles of**

Corporations

Incorporation of cemetery associations, 6479—6502

Incorporation of religious, social, and benevolent corporations, 6453

Incorporators, rural electric corporation, 6396.5

Incubated eggs, definition of, 2634.6

Indebtedness of Counties

See **Abandonment of Counties**

Independent order of good templars, incorporation of, 6453

Indian assistance, 349A.7

Indian service officers, fire wardens, ex-officio, 1840.25

Industrial Accident Board

See **Attorney General**

Chairman

Industrial accident board, attorney general
legal advisor of, 2835

Industrial Hygiene

See **Division of Industrial Hygiene**

Industries, Accounts

See **Commission for the Blind**

Industries of the blind, accounts of, 1473.13

Infested Fruit

See **Fruit, Infested**

Information, duty to give, accidents, 1754.31

Inheritance, non-resident aliens, 7090.2

Initiative and Referendum

State highway treasury anticipation debenture
act of 1938, 2381.4n

Injunctions

Milk control board, powers of, 2640.24
Unfair practices act, 10915.5

Injured persons, accidents, medical aid, 1754.31

Injuries, Personal

See **Compensation**

Personal Injuries

Injury to property, operation of motor
vehicle, 1754.12

Inmates of Public Institution

Aid to blind, 349A.60
Application for assistance, 349A.38

Insane Asylum, 1431—1444i

Betterments for, 1444a
bonds authorized in excess of constitutional
limitation, 1444a
amounts, 1444b
dates, 1444c
denominations of, 1444c
disposition of, 1444e
form, 1444d
issuance in series, 1444b
price of, 1444e
proceeds, disbursement of, 1444f
commissions, 1444i
compensation of architect, 1444i
cost of issuance, 1444i
fees, 1444i
warrant, 1444g
referendum on act in 1940, 1444h
ballots, form of, 1444h
registration of, 1444d
tax levy for payment, 1444g
terms, 1444c

Insane person, 1431

admittance to asylum, superintendent
may refuse, 1439
affidavit of insanity, 1431

Insane Asylum—Continued

Insane person—continued

apprehension of, 1431
magistrates to apprehend, 1431
warrant of, 1431
form, 1431
return showing service, 1431
bond for appearance, 1443
confinement in asylum, order of, 1438
delivery of to asylum, 1439
examination of, 1431
doctors to attend, 1433
fees and mileage, 1441
subpoenas issue for doctors, 1433
order fixing time, 1431
financial worth of, 1444
application of toward maintainance, 1444
determination of, 1444
guardianship proceedings, 1444
jury trial of insanity, 1443
bond for appearance, 1443
costs, 1443
procedure, 1443
money found on insane person, disposition, 1440
property of, application of, maintenance, 1444
witnesses, 1432
physician witness, compensation and
mileage, 1441
subpoenas issue for, 1432

Insane Asylum Bonds

See **Ballots**

Board of Examiners
Bonds

Insane Hospital Bonds

See **State Insane Hospital Bonds**

Insane persons, dower right, mortgage of, 10416.1

Insanity

See **Affidavit of**

Insanity, cancellation of registration, 570

Inspection of Horses and Cattle Removed from State, 3321—3323

Certificate of inspection, when withheld, 3322
Fees for inspection, disposition of, 3322.1
Inspection at destination, when permitted, 3321
Inspector
duties of, 3322
report, 3322
Violations of act, 3323
fines, disposition of, 3323
penalties, 3323

Inspection of Brands of Livestock Removed to Another County, 3324

Certificate of inspection, 3324
retention and exhibition by shipper, 3324
Fee for inspection, 3326.1
Loading and unloading for inspection, 3324.1
place, county commissioners may
designate, 3324.1

Inspection of Brands of Livestock Removed to Another County—Continued

- Necessity of inspection, exceptions, 3324
- Shipments other than by railroad
 - documents forwarded to livestock commission after delivery
 - inspection certificate, 3324
 - statement of consignee's name and address, 3324
- Violations of act, 3327
 - finer, deposition of, 3327
 - penalty, 3327

Inspections by milk control board, 2640.15

Inspector

See **Cosmetology and Hairdressing**

Institution, inmate of, aid to blind, 349A.60

Instructors, junior colleges, 930.19

Instruments

See **Acknowledgment and Proof of Instruments**

Insurance

See **Banks and Banking**

- Commissioners of**
- Federal Deposit Insurance Corporation**
- Insurance Companies**
- State Insurance**
- State Insurance Commission**
- State-Owned Property Insurance**
- Life Insurance Companies**
- Life Insurance Policy**
- Mutual Hail Insurance**
- Mutual Rural Insurance Companies**

Insurance Commissioner

- Motor vehicle liability policies
 - approval by, 1754.23
 - receipt of copy by, 1754.23

Insurance Companies, General Provisions, 6127.1—6127.5

- Application of act, 6127.2
 - exceptions, 6127.2
- Foreign, 6651
- Investment in home owners' loan corporation
 - bonds, 5309.35
- License tax, exemptions, 2296
- Loans by, under national housing act, 6018.1
- Policies
 - application, agent must sign, 6127.1
 - place of issuance of, 6127.1
 - resident agent, insurance must be written through, 6127.1
 - exceptions, 6127.1
- Rebates prohibited, 6127.1
- Repeals, 6127.5
- Resident agent, 6127.1
 - commission, 6127.1
 - countersigns policies, 6127.1
 - records, 6127.1

Insurance Companies, General Provisions—Continued

- Violations of act, 6127.3
 - finer, 6127.3
 - revocation of authority, 6127.3
 - reauthorization to do business, 6127.4
 - conditions precedent, 6127.4
- Insurance, liability, motor vehicle act, 1754.21, 1754.23
- Interdicted person, definition of, 2815.165
- Interest and income fund, public schools, 1200.4-1
- Interest on damages, 8662
- Interest, school bonds, 1224.4
- Interests in property, ownership of, 6674

Interference with Balloting

See **Crimes**

Interference with electric wires, 2711.1

Intergovernmental Cooperation, 5668.45—5668.55

- Act to be sent to other state governments, 5668.55
- Commission for, 5668.48
 - advisory boards, may provide for, 5668.51
 - committees
 - titles of, 5668.53
 - compensation, 5668.52
 - council of state governments, 5668.50
 - delegations and committees, 5668.51
 - appointment, 5668.51
 - personnel, 5668.51
 - employees, 5668.52
 - establishment, 5668.48
 - expenses, 5668.52
 - functions, 5668.50
 - personnel, 5668.48
 - powers and functions, 5668.51
 - reports, 5668.52
 - rules, 5668.51
 - title, 5668.53
- Committees of senate and house, 5668.49
 - council of the American legislators'
 - association, 5668.49
 - functions of, 5668.49
 - terms of service, 5668.49
- Council of state governments, 5668.54
- Governor's committee, 5668.47
 - establishment, 5668.47
 - personnel, 5668.47
- House committee, 5668.46
 - establishment, 5668.46
 - personnel, 5668.46
- Senate committee, 5668.45
 - establishment, 5668.45
 - personnel, 5668.45

Interstate commerce, milk control act, 2640.23

Interstate compacts, water rights, 7135.1

Instate estates, persons entitled to administer, 10068

Intoxicating liquor, driving under the influence of, 1741.7

Intrastate telephone business, tax on, 2355.10

Inventories by board of examiners, 269c

Inventories of Stocks, Etc.See **Board of Examiners****Investment Companies**See **Regulation of**

Investments of cemetery funds, 6499

InvestmentsSee **Building and Loan Associations****Invoices**

Falsification of, 10915.12c

State liquor stores, 2815.179

Irrigation DistrictSee **Bankruptcy**

Appeals, 7264.14a—7264.20

Bankruptcy proceedings, 7264.14a

Board of commissioners, powers, duties,
and elections, 7174

Construction of act, 7264.14b

District court

jurisdiction, 7189.1

orders and decrees, 7189.1

correction of errors, 7189.1

modification of orders, 7189.1

Financial aid, securing of, 7264.19

Indebtedness, liquidation, 7264.14a

Miscellaneous provisions, 7264.14a—7264.20

Operations, cessation, 7264.20

Property, disposition, 7264.19, 7264.20

Rights of way, 7196.1

Water, use and appropriation of, 7196.1

Irrigation works, construction across water
courses, 7196.1**Issues of Fact**See **Civil Actions**

Issues of fact, how tried, 9327

Issues of law, trial of, before issue of fact, 9327

Itinerant, cosmetologists, 3228.2

Definition of, 2429.24

Itinerant Merchants, 2429.24—2429.38

Administration of act, 2429.34

Bond, surety, 2429.30

Construction of act, 2429.37

Exemptions, 2429.27

persons exempt, 2429.27

License

application for 2429.29

display of, 2429.31

fees, 2429.36

form, 2429.31

issuance of, 2429.31

by commissioner of agriculture, 2429.28

motor vehicle license required, 2429.29

not transferable, 2429.32

revocation, 2429.33

Persons not included as, 2429.26

Rules, commissioner of agriculture to
make, 2429.34**Itinerant Merchants—Continued**

Violation of act, 2429.35, 2429.38

penalties, 2429.38

seizure of vehicle, 2429.35

Itinerant Venders License, 2429.17, 2429.21

Amount of, and term, 2429.17

Exhibition, penalty for failure, 2429.21

J**Jail**See **County Jail**Joinder of parties, tax deeds, actions
concerning, 2215.2**Joint County or Regional Libraries, 4573.1—4573.6**

Appropriations, 4573.4

Board of trustees, 4573.3

compensation, serve without, 4573.3

expenses, 4573.3

Personnel, 4573.3

terms of office, 4573.3

vacancies, 4573.3

Establishment and maintenance, 4573.1

expenses, 4573.1

Expenditures, 4573.4

Fund, 4573.1

custody of, 4573.1

Government units maintaining libraries, 4573.2

participation in, 4573.2

ownership of property, 4573.2

taxation, 4573.2

Librarian, 4573.6

qualifications of, 4573.6

salary, 4573.6

Maintenance, 4573.1

Taxation, 4573.4, 4573.5

levy by county commissioners, 4573.5

limit of, 4573.5

Trustees, board of, 4573.3

Joint High SchoolsSee **High School Code, 1262.14—1262.99g****Joint Stock Companies**

Corporation license tax, 2296

Foreign, 6651

Journalism building, state university, 877.6

Journalism SchoolSee **Buildings****Judges**

Criminal

suspension of sentence, 12087, 12082.1

copy mailed to prison commissioners and
bureau of identification, 12082.1

court may suspend, 12078

court retains jurisdiction, 12082.1

juvenile delinquents not affected by
act, 12078

Judges—Continued :

- Criminal—continued
 - suspension of sentence—continued
 - revocation of, 12078
 - court may revoke suspension, 12078
 - hearing, defendant entitled to, 12078

- District court
 - cemetery associations
 - trustees
 - removal from office, 6490
 - trustees of funds
 - appointment, 6489
- Mode of drawing jurors, 9335
- To draw jury, 9334

Judges of Election**See Board of County Commissioners**

- How appointed, 587
- Local option, 2815.193
- Returns by, 782
- Second or additional boards, 587
- To put ballots in box, 700

Judgments**See County Finances, Bonds and Warrants**

- Default, 9664
 - action on contract, 9322
 - service by publication, 9322
 - when entered, 9322
- Justice court, 9680
- Motor vehicle act, sale of real property, 1754.15
- Partial payment, 1754.13
- Under uniform drug act, on search
 - warrant, 3202.26
- Water rights, adjudication of, 7135.9

Judicial Notice

- Common law, 10532.1
- Construction of act, 10532.6
- Foreign laws, 10532.1—10532.7
 - laws of foreign countries, no judicial notice, 10532.5
 - laws of sister states
 - aid of counsel, 10532.2
 - how obtained, 10532.2
- Question for court, 10532.3
- Request to court to take notice, 10532.4
- Short title, 10532.7

Judicial officers, exempt from jury duty, 8893**Junior Colleges****See Bonds**

- Budget
- Buildings
- Colleges

- Administration of, 930.15
- Budgeting, 930.16
- Dean, qualification of, 930.19
- Definitions, 930.8
- Diplomas, 930.18

Junior Colleges—Continued

- Establishment, 930.17
 - method of, 930.9
 - county high school boards to establish, 930.9
 - district high school boards to establish, 930.9
- Elections, 930.11
 - electors, approval of, 930.12
 - superintendent of public instruction, approval by, 930.10
- Faculty, 930.13
- Instructors, qualification, 930.19
- Laboratories, 930.17
- Libraries, 930.17
- Location, 930.13
- Operation, 930.17
- Petition for, 930.9
- Requirements, 930.17
- State superintendant, powers of, 930.14
- Students, classes of, 930.18
- Tuition, 930.16

Junior High Schools**See High School Code, 1262.14—1262.99g****Juries, 8883—8889**

- Formation of, 9334—9341

Jurors

- construction of statutes, 8890.1
- drawing, 9334
 - box No. 3, 9341
 - district judge to draw, 8903
 - entry in minutes, 8904
 - mode, 8904, 9335
- exemption
 - claim, affidavit, 8895
 - who exempt, 8893
- insufficient number of jurors, 9341
- list, certification of, 8904
- qualifications of, 8890
- statutes concerning, 8890.1
- summoning for courts of record, 8903, 8904
- who may be excused, 8894
- Trial jury, number, 8887

Jurisdiction, eminent domain, 9939**Jury****See Challenge**

- Defined, 8883
- Duty, who may be excused, 8894

Jury Duty Exemption**See Affidavit of Attorneys Colleges**

- Jury of inquest defined, 8889
- Jury trial of insanity, 1443

Justice CourtsSee **Answer**

Costs, 9716

Defendant's

answer, 9632

appearance, time for, 9632

Dismissal without prejudice, 9680

General provisions, 9716

Judgments, 9680

Summons

alias, 9633

contents, 9631

copy of complaint served with, 9631

how issued, 9631

Trial, fixing day of, 9637

Justice of PeaceSee **Abandonment of Counties****Coroners****County Commissioners**

Blanks furnished by county commissioners, 4520.2

Court rooms furnished by county commissioners, 4520.2

Deputy registrars to act as, 557

Dockets, reports, etc., printed under county contract, 4482.17

Fees, highway violations, 1741.10

Writs, illegal use of, 10921

K

Kidnapping, Highway patrolmen to arrest when, 1741.9

L**Labor**See **Hours of Labor**Federal fair labor standards act, 3635.1
enforcement, 3635.1

Hours

in specified occupations, 3083.6

regulation, Const., Art. XVIII, § 4

Preference given soldiers and sailors on
public works, 5653

Laboratories of junior colleges, 930.17

Labor organizations, corporation license tax
exemption, 2296**Land Commissioners, Board of**See **State Board of Land Commissioners**

Landings of aircraft, 2736.7

LandsSee **County Finances, Bonds and Warrants****County Lands****Forest Lands****State Lands****Lanes**See **Stock Lanes**Larceny, highway patrolmen to arrest when, 1741.9
Law enforcement officer's report of accidents, 1754.35**Law Librarian**See **Assistant Law Librarian****Law Library**See **Board of Trustees**

Assistant law librarian, 1569

Books, purchase of, 1556

Funds, 1556

Trustees of, 1556

Lease of State LandsSee **Application for****Leases**See **Gas Leases**

Mining, 1805.48—1805.51-18

Oil and gas, 9479.1

Release of, 6893

Rural electric associations, 6396.21

Leases, Oil and GasSee **Cancellation of****Leasing**

Agricultural lands, 1805.21—1805.32

State lands

examination

board to examine, 1805.51-11

deposit for examination, 1805.51-11

duties of board, 1805.51-11

record of, 1805.51-11

Failure of title, 1805.51-12

Preference shown, 1805.32

Left side of road, pedestrians to walk on, 1741.7

Legal advisor, retirement board, 1132.3

Legislative appropriations for public welfare
purposes, 349A.79**Legislative Assembly**House of representative, officers and employees
designation, 63
number, 63

Officers and employees

compensation, amount and how paid, 76

Senate, officers and employees

designation, 62

number, 62

Legislative Powers, Powers of City Councils

City property

leasing or disposing of, 5039.61

park commission's power to lease not
abrogated, 5039.61

power of city, 5039.61

Condemnation, for public use, 5039.74

Streets, changing names or numbers of, 5039.5-1

city council may be resolution, 5039.5-1

property owners may object, percentage
controlling, 5039.5-1

plat showing change and territory

affected, 5039.5-2

filed with county clerk and recorder, 5039.5-2

Legislative RepresentativesSee **Counties**

Length of motor vehicles, 1751.2

Letters of AdministrationSee **Administrators**

Levy of taxes, 2147.1—2155c

Liability insurance, motor vehicle act, 1754.21

Liability policy, motor vehicle, definition of, 1754.23

Libel, by radio broadcasting, 5694.1

Librarian of historical library, member of
science commission, 1575.3**Libraries**See **Joint County or Regional Libraries****State Library**

Incorporation of, 6453

Junior Colleges, 930.17

State bureau of mines, 884

LibrarySee **State and Law Library**

Library funds, 1556

Library of congress, to receive public reports, 521

Licensed egg graders, 2634.13

Licensee

Business to be carried on by, 2815.200

Milk control act, definition of 2640.3

Licensees, LiquorSee **Complaints****License**

Butter dealers, wholesale, 2620.71

Cancellation of, local option, 2815.197

Cheese dealers, wholesale, 2620.71

Child-placing agencies, 349A.72

Drivers, 1741.11

Egg dealers, 2634.1

Fees on automobiles, disposition of, 1759.3

Food stores, 2599.10

Husksters, 2429.10

Infant's homes, 349A.72

Itinerant venders, 2429.17, 2429.21

Liquor, business to be carried on by
licensee, 2815.200

Maternity homes, 349A.72

Milk distributors, 2640.8

Milk license, application for, 2640.10

Milk producers, 2640.8

Miscellaneous licenses, 2435.1—2539.8

Misuse of, 1741.7

Movie theatres, 2439.1

Pharmacies, 3202.7a

Pharmacists, 3174

Plates, motor vehicles, 1759.2

Public contractors, 2433.5, 2433.6

Restoration of, motor vehicles, 1754.13

Stores selling drugs, 3202.7a

Taxi drivers, 1741.11

Truck drivers, 1741.11

LicensesSee **Barbers and Barber Shops****Chiropody****Cosmetology and Hairdressing****Itinerant Venders License****Liquor Licenses****Movie Theater Licenses****Podiatry****Store Licenses****Suspension of Licenses****License Tax**See **Coal Mines License Tax****Corporations****Electrical Energy Producers' License Tax****Telephone License Tax**

Coal mines, 2317, 2323

Electrical energy producers, 2343.1—2343.3

Gasoline distributors, 2381.4i

Stores, 2428.1—2428.14

Telephone, 2355.10—2355.18

LiensSee **Abandonment of Counties**Cost of removing infected fruit trees, lien
on land, 3617

Fines and costs under uniform drug act, 3202.29

Foreclosure of, motor vehicle act, 1754.15

Life Insurance CompaniesAnnuity benefits on lives of children, 6339
maximum benefits payable, 6339

Construction of act, 6269.1

Improved real estate defined, 6269

Investment of funds, 6269

kind of, 6269

Loaning money, 6269

Life Insurance Policy

Proceeds, income tax, 2295.7

Return premiums, income tax, 2295.7

Lights on vehicles, improper use of, 1741.7

Limitation of term of bonds, school, 1224.4

Limitation on membership, teachers' retirement
system, 1132.15**Limitations of Actions**See **Actions**

Claims against estate, 10178

Other actions, 9029

Limitations of ownership, 6711, 6713

Limitations, on jurisdiction of industrial acts of the
board to rescind or amend any order, decision
or award, 2952**Liquor**See **State Liquor Stores****Liquor Administrator**

Assistant to, 2815.63

Bond of, 2815.63

Powers and duties of, 2815.63

Liquor Control Board**See Montana Liquor Control Board**

- Liquor control board receipts, contribution to teachers' retirement fund, 1132.11
- Liquor control, public policy, 2815.164
- Liquor, definition of, 2815.165
- Liquor licensees, complaints against, 2815.187

Liquor Licenses**Applicant**

- approved by local authorities, 2815.168
- investigation of, 2815.169
- Application, false statements, 2815.168
- Beer license necessary, 2815.172
- Buffet cars, 2815.170
- Business carried on by licensee, 2815.200
- Contents of, 2815.171
- Dining cars, 2815.170
- Expiration of, 2815.171
- One per year, 2815.172
- Person disqualified to hold, 2815.173
- Provisions governing, 2815.171
- Retail, 2815.166
- Revocation, 2815.201
- Sale by licensee, 2815.174
- Saving clause, 2815.202
- Violation, penalties, 2815.201

Liquor Nuisances**See Attorney General
County Attorney**

- Liquor permits, fees, 2815.77

Liquor, Sale of

- Cash basis, 2815.177
- Hours, 2815.175
- Illegal, 2815.106b
- Minors, 2815.209
- Not purchased from liquor stores, 2815.180
- Posted price, 2815.177
 - sale at less than posted price, 2815.182
- Proximity to
 - church, 2815.176
 - school, 2815.176
 - restrictions on, 2815.174
- Without license, 2815.181

Liquor Sales**See Churches
Sale of**

- Liquor, seizure by officer, 2815.184
- Liquor unlawfully possessed, 2815.184

Livestock**See Inspection of Brands of Livestock****Livestock Markets**

- Decisions of livestock commission
 - appeal from
 - to district court, 3332.10
 - bond, 3332.10
 - costs, 3332.10

Livestock Markets—Continued

- Decisions of livestock commission—continued
 - appeal from—continued
 - to district court—continued
 - hearing, 3332.10
 - notice of, 3332.10
 - transcript, 3332.10
 - to supreme court, 3332.10

Definitions, 3332.2**Enforcement of act by commission, 3332.9****Establishment, 3332.1****Investigation of**

- complaint filed with commission, 3332.9
- notice of hearing, 3332.9
- oaths, commission may administer, 3332.9
- process, 3332.9
- subpoena witnesses, 3332.9

License

- application for, 3332.1
 - written application for, 3332.3
- bond for, 3332.4
 - actions on, 3332.4
 - conditions of, 3332.4
 - copies furnished by secretary, 3332.4
 - fee for, 3332.4

cancellation of license, 3332.7**grounds for, 3332.7****certified copy of, 3332.5****fee for, 3332.5****copies of license and bond furnished by secretary, 3332.4****fee for, 3332.4****fee for, 3332.3****disposition of by commission, 3332.12****return of if license refused, 3332.3****investigation of licensee by commission or secretary, 3332.9****posted during sale period, 3332.5****renewal, 3332.3****annually, 3332.3****suspension or cancellation, 3332.7****grounds for, 3332.7****Operation without license unlawful, 3332.1, 3332.3****Records and accounts to be kept by****licensee, 3332.8****open to inspection by commission, 3332.8****Reports, licensee to make when demanded, 3332.8****Rules and regulations, 3332.6****livestock commission to make, 3332.6****Sales, 3332.11****dispersal, requirements, 3332.13****doubtful brands, proceeds held, disposition of, 3332.11****proceeds, 3332.11****title, 3332.11****warranty of by operator, 3332.11****Violations of act, penalties, 3332.14**

Livestock Sanitary Board

- Condemned carcasses
sale of, 3277
disposition of proceeds, 3277
- Federal government, agreement with, 3268.1
- Powers of board, 3268.1
- Rules and regulations, 3268.1

- Livestock transportation, jurisdiction over, 1741.9
- Loads on motor vehicles, 1751.4

Loan Associations

- See **Building and Loan Associations**

Loans

- See **Building and Loan Associations**

- Local authorities, to restrict use of highways, 1751.7
- Local boards of health, 2484.1—2484.8

Local Jurisdiction of Public Offenses, 11712

- Property feloniously taken in one county and brought into another
costs, 11712
jurisdiction, 11712

Local Option

- See **Ballots**

- Elections, 2815.197
 - ballots, form of, 2815.195
 - contests of elections, 2815.198
 - judges of election, 2815.196
 - polling places, 2815.196
 - second election, 2815.199
- Licenses, cancellation of, 2815.197

Local Option License

- See **Cancellation of**

- Locomotives, fire arresters required, when, 1840.18
- Lodges, corporation license tax exemptions, 2296
- Logging engine, spark arrester required,
when, 1840.18

Lumber Yards

- Exempt from store license, 2428.5
- Special license tax, 2428.6

- Lyceums, incorporation of, 6453

M

- Mail carriers, exempt from jury duty, 8893
- Main highways, parking on, 1741.7
- Management of funds, retirement system,
teachers' 1132.7
- Mandamus, milk control board, powers of, 2640.24
- Mandate, writ of, 9848
- Manner for commencing action in justice
courts, 9631—9637
- Manner of voting, 700

Map

- See **Cemetery Associations**

- Marketing areas, control over by milk control
board, 2640.6

- Market inspectors, bonds of, 464

- Market, milk control act, definition of, 2640.3

Markets

- See **Livestock Markets**

Marriage

- See **Dissolution of Marriage, Divorce**

- Marriage of dependents under workman's
compensation act, 2891

Marshal of the Supreme Court, 366—368

- Appointment of, 366
- As law clerk, 367
- Duties of, 367
- Expenses, 368
- Salary and expenses, 368

- Masonic lodges, incorporation of, 6453

- Matches, restrictions on, forest areas, 1840.17

Measures

- See **Weights and Measures, Standard—State Sealer**

- Meat and milk inspectors, bonds of, 466

Meat Peddlers

- See **Butchers and Meat Peddlers**

- Meat spot, eggs, definition of, 2634.6

- Medical aid and hospitalization, general
relief, 349A.27

Medical Board

- Definition of, retirement system, teacher, 1132.1
- Retirement system, teachers', 1132.3

- Medical examination, retirement system,
teachers', 1132.6

Medicine

- See **Doctors of Medicine**

- Meetings, rural electric associations, 6396.8

- Member, definition of, retirement system,
teachers', 1132.1

Membership of Retirement System, Teachers', 1132.4

- Limitations on, 1132.15

- Membership service, definition of, retirement
system, teachers', 1132.1

- Members, rural electric association, 6396.8

- Mental incompetents, sale of dower rights, 10416

Merchants

- See **Itinerant Merchants**

- Merger of companies, rural electric
association, 6396.14

- Metalliferous minerals, definition of, 1805.51-1

- Metal workers, security for payments of
wages, 3094.1

- Method of financing teachers' retirement
fund, 1132.8

MileageSee **Salaries, Fees, Expenses, and Mileage**

Military officers, exempt from jury duty, 8893

Militia, 1400.1—1400.6

Annual encampment, 1377.1

leave of abence for, 1377.1

vacation, not charged against, 1377.1

with pay, 1377.1

Montana armory board, 1400.1—1400.6

appointed by governor, 1400.1

by-laws of, 1400.4

compensation of members, 1400.5

creation of, 1400.1

objects of, 1400.6

organization and meetings, 1400.3

powers of board, 1400.4

Milk associations, formation of, 2640.18

Milk collecting station, definition of, 2620.4

Milk containers, condemnation of, 2620.72

Milk Control ActSee **County Attorney**

County attorneys to prosecute violations, 2640.22

Definitions under, 2640.3

District court to have jurisdiction, 2640.22

Foreign commerce, 2640.23

Interstate commerce, 2640.23

Licenses required in addition to, 2640.22

Violations as misdemeanors, 2640.22

Milk Control BoardSee **Attorney General****Cooperation**

Actions, 2640.24

Appointment to, by governor, 2640.4

As party plaintiff or defendant, 2640.24

Assets, transfer of, 2640.25

Attorney general to represent, 2640.24

Citations of, sheriff to serve, 2640.5

Compensation of members, 2640.4

Control over

marketing areas, 2640.6

markets, 2640.6

Cooperation with other agencies, 2640.21

Cooperative associations, 2640.19

Creation of, 2640.4

Dealers' reports, 2640.16

Employees, 2640.4

General powers, 2640.5

General purposes of act, 2640.2

Handling charges, fixing of, 2640.7

Hearings, fees of officers, 2640.5, 2640.20

Injunctive relief, 2640.24

Inspection of premises, 2640.15

Investigations by, 2640.15

Licenses

application for, 2640.10

fees, 2640.9

delinquent fees, penalties, 2640.12

disposition of, 2640.17

Milk Control Board—Continued

License—continued

fees—continued

distributors, 2640.8

producers, 2640.8

producers-distributors, 2640.8

revocation, 2640.11

suspension, 2640.11

Local associations

formation of, 2640.18

fostering, 2640.18

Mandamus, 2640.24

Markets, establishment of, 2640.6

Milk dealers

cooperative associations, 2640.19

reports of, 2640.16

Orders of, 2640.13

enforcement, 2640.13

Personnel, 2640.4

Prices

fixing of, 2640.7

retail, 2640.7

minimum, 2640.7

Rules

fair trade practice, 2640.14

public health laws not abrogated by, 2640.5

Secretary, 2640.4

Subpoena of milk dealers, 2640.5

Summons, 2640.5

Supervision of milk industry, 2640.5

Milk

Definition of, 2640.3

Pasturization of, 2620.49

Policy, declaration of, 2640.1

Price stabilization, 2640.1

Producers, license fees, 2640.9

Retail price of, 2640.7

Sherbet, definition of, 2620.4

Skimmed, definition of, 2620.4

Unfair trade practices, 2640.1

Milk DealersSee **Cooperative Associations****Mine and Metal Works**See **Wages of Mine and Metal Workers—Security for Payment**

Mineral deposits, state bureau of mines, 884

Mineral leases, release of, 6893

MinesSee **Bureau of Mines and Geology****Coal Mines License Tax**

School of, 884

Taxation of, 2090.1—2091.1

Mines and geology, bureau of, 884

Mine workers, security for payment of

wages of, 3094.1

Minimum price of merchandise, fair trade act, 7590.2

Minimum prices, milk, 2640.7

Mining

- Definitions, 1805.51-1
 - full market value, 1805.51-1
 - gems, 1805.51-1
 - precious stones, 1805.51-1
 - mining lease, 1805.51-1
 - returns, 1805.51-1
 - semi-precious stones, 1805.51-1
- Leases, 1805.48—1805.51-18
 - definition of, 1805.51-1
 - royalties, disposition of, 1805.51-17
 - state lands
 - application, form of, 1805.51-6
 - bonds, 1805.51-7
 - to protect lessees, 1805.51-8
 - coal lease, 1805.51-10
 - gas leases, 1805.51-10
 - oil leases, 1805.51-10
 - prospecting period, 1805.51-3
 - provisions of, 1805.51-3
 - quantity of lands, 1805.51-5
 - royalties, 1805.51-4
 - sale of lands, 1805.51-9
 - Mineral lands, conveyance to United States, 1805.65-1

Mining Leases**See Bonds**

Ministers, exempt from jury duty, 8893

Minors

- Guardian's bond, 10408.1
- Period of act, limitation under workman's compensation, 2900
- Sale of liquors to, 2815.209
- Service of summons on, 9111

Miscellaneous licenses, 2435.1—2439.8

Miscellaneous offenses against public justice, 10921

Misdemeanors

- Awarding of degrees and honors without authority, 836b
- Destruction of signs, 1840.20
- Forest fire protection, 1840.17
- Itinerant vendors license, failure to to, 2429.21
- Violations of
 - forestry act, 1840.27
 - milk control act, 2640.22
 - motor vehicle code, 1741.8
 - protection of copyrights act, 6815.9
- Withholding funds, retirement system, teachers', 1132.10

Misuse of motor vehicle license and plates, 1741.7

Mizpah Pumpkin creek grazing district 7364.29-19

Moldy eggs, definition of, 2634.6

Money found on insane person, 1440

Money to satisfy judgment, motor vehicle act, 1754.15

Moneys, construction of state highways, 2396.3

Montana Agricultural Conservation Act

- Acts of congress, acceptance of, 3649.6
- Agricultural associations, community and county, 3649.11
- Agricultural districts, 3649.10
 - boundaries, 3649.10
 - board may revise or change, 3649.10
 - county committees and association, 3649.11
 - community committees and associations, 3649.11
 - representatives of, 3649.10
- Community associations and committees, 3649.11
- Conservation board, 3649.8
 - accounts, 3649.14
 - appointment of, how made, 3649.12
 - compensation, 3649.14
 - designated as state agency, 3649.9
 - educational programs, 3649.13
 - employees
 - bonds of, 3649.14
 - compensation fixed by board, 3649.15
 - established, 3649.8
 - executive secretary, board may employ, 3649.15
 - expenditures, 3649.14
 - administration, 3649.14
 - conservation fund, 3649.14
 - funds
 - receipt and disbursement of, 3649.14
 - state treasurer to receive, 3649.14
 - members
 - compensation of, 3649.14
 - qualifications and number of, 3649.8
 - recommendations by county chairmen, 3649.12
 - terms, 3649.12
 - participating agencies, 3649.16
 - plans
 - formulate agricultural plans annually, 3649.13
 - consult with county agricultural associations, 3649.13
 - investigations necessary to formulate, 3649.13
 - scope of, 3649.13
 - submit to secretary of agriculture, 3649.13
 - powers and duties, additional, 3649.15
 - recommendations to, 3649.8
 - reports, 3649.16
 - rules and regulations, 3649.15
 - state agency, designated as, 3649.9
 - utilizes other state agencies, 3649.15
 - vacancies, 3649.12
- Definitions, 3649.7
- Districts, agricultural, 3649.10
- Effective date of act, 3649.17
- Executive board, membership, 3649.11
- Federal government, cooperation with, 3649.6
- Powers conferred, 3649.6
- Production, not to be discouraged, 3649.6
- Public policy, declaration, 3649.5
- Short title, 3649.4
 - administration fund, 3649.14
 - conservation fund, 3649.14
- State treasurer
 - receives funds and grants, 3649.14

Montana armory board, 1400.2

Montana Beer Act, 2815.11—2815.52

- Administration of, 2815.12
- Alcoholic content of beer, 2815.13
- Ale, sale of, 2815.13
- Beer, imported into state, 2815.25b
- Brewers, failure to make return, 2815.25a
- Carriers, 2815.25b
- Definitions, 2815.11
- Porter, sale of, 2815.13
- Returns, importation of beer, 2815.25b
- Statement, failure to file, brewer, 2815.17
- Stout, sale of, 2815.13
- Taxes
 - collection, 2815.25a
 - liens, 2815.25a
- Wholesalers, failure to file statement, 2815.25

Montana highway commission, definition of, 1741.11-1

Montana Highway Patrol, 1741.4—1741.11-1

- Arrest by patrolmen, when, 1741.9
- Bicycle improperly lighted, 1741.7
- Board, 1754.28
 - assistant supervisors, resignation of, 1741.5
 - decisions, appeals, 1741.5-1
 - definition of, 1741.11-1
 - hearing charges, 1741.5-1
 - nuisances, abatement of, 2815.106a
 - patrolmen, appointment of, 1741.5
- Bright lights, 1741.7
- Driving
 - on wrong side of highway, 1741.7
 - under the influence of drugs, 1741.7
 - under the influence of intoxicating liquor, 1741.7
 - with more than three in front seat, 1741.7
 - without rear view mirror, 1741.7
 - without windshield wiper, 1741.7
- Excessive noises, cutouts, 1741.7
- Failure to
 - obey highway patrolmen, 1741.7
 - observe signs, 1741.7
- Fines, 1741.8
- Imprisonment, 1741.8
- Improper lights on vehicles, 1741.7
- Justice of peace, fees, 1741.10
- License
 - misuse of, 1741.7
 - driver's license required, 1741.11
- Offenses on highways
 - arson, 1741.9
 - assault with deadly weapon, 1741.9
 - burglary, 1741.9
 - dyer act, 1741.9
 - kidnapping, 1741.9
 - larceny, 1741.9
 - murder, 1741.9
 - narcotics, transportation of, 1741.9
 - stolen automobiles, transportation of, 1741.9
- Operating motor vehicle in unsafe
 - condition, 1741.7

Montana Highway Patrol—Continued

- Passing
 - on blind curves, 1741.7
 - on hills, 1741.7
 - without giving warning, 1741.7
- Patrolmen
 - demotion, 1741.5-1
 - discharge
 - authority to hear charges, 1741.5-1
 - board to hear charges, 1741.5-1
 - causes, 1741.5-1
 - charges, 1741.5-1
 - hearing, 1741.5-1
 - notice of hearing, 1741.5-1
 - suspension pending hearing, 1741.5-1
 - duty on making arrest, 1741.10
 - equipment for, 1741.6
 - excessive loads, officers to remove, 1751.5
 - fire wardens, ex-officio, 1840.25
 - labor disputes, forbidden to act in, 1741.9
 - probation, 1741.5
 - punishment, 1741.5-1
 - qualifications of, 1741.5
 - re-enstatement, 1741.5-1
 - salary, 1741.5
 - selection of, 1741.5
 - suspension, 1741.5-1
 - tenure of office, 1741.5-1
 - training, 1741.5
 - weighing vehicles, duty, 1751.5
 - witnesses, 1741.5-1
- Pedestrians, violations by, 1741.7
- Prohibition of driving, 1741.8
 - appeal, 1741.8
- Reckless driving, 1741.7
- Speeding, 1741.7
- Stalled vehicles without flares or flags, 1741.7
- Stopped or parking on main highways, 1741.7
- Supervisor, 1741.4
- Summons to offenders, 1741.10
 - powers, 1741.4
 - residence, 1741.4
 - salary, 1741.4
 - term, 1741.4
 - traveling expenses, 1741.4
- Towing a trailer not properly equipped, 1741.7
- Transportation of
 - livestock, jurisdiction over, 1741.9
 - livestock products, jurisdiction over, 1741.9
- Warning cards, 1741.8
- Wrecker cars without flags or flares, 1741.7

Montana Liquor Control Board

See **Chairman**

- Beer act, administration, 2815.12
- Beer tax, collection, 2815.25a
- Chairman, 2815.63
- Creation of, 2815.63
- Employees, 2815.183
 - forbidden to deal in liquor, 2815.183

Montana Liquor Control Board—Continued

Excise tax

- collection of, 2815.178
- disposition of, 2815.178

Forms, 2815.185

Fraternal organizations, 2815.167

License

- application for, 2815.168
- investigation, 2815.169
- approval by local authorities, 2815.168
- fees, 2815.167
- railroad, 2815.167
- retail, issuance of, 2815.166
- revocation, 2815.180

Licensee

- complaints against, 2815.187
- appeal, 2815.188
- determination of, 2815.187
- hearings, 2815.188
- investigation of, 2815.186

Liquor administrator, 2815.65, 2815.66

- assistant administrator, 2815.66
- oath and bond, 2815.65

Liquor permits, 2815.77

- fees, 2815.77
- residents, granting of, 2815.77
- special permits, 2815.77

Members

- appointment, 2815.63
- compensation, 2815.63
- expenses, 2815.63
- meetings of, where held, 2815.63
- qualification, 2815.63
- terms of office, 2815.63
- removal, 2815.63

Moneys received

- disposition of, 2815.154
- duty to receive from liquor stores, 2815.154

Nuisances, enjoining of, 2815.106b

Powers to administer beer act, 2815.12

Records, 2815.185

Rules and regulations, 2815.185

Stores, liquor

- closing of, 2815.75
- control over, 2815.69

Montana lumber manufacturing association,
recommend member to forestry board, 1840.1Montana old age pension commission, duties
assumed by state board of public welfare, 349A.2**Montana Orthopedic Commission, 2511—2514**

- Duties assumed by state board of public welfare, 349A.2

Montana pure food and drug act, application
of, 2599.12**Montana Relief Commission**

- Act repealed, 335.1—335.17
- Duties assumed by state board of public welfare, 349A.2

**Montana Rural Rehabilitation Corporation,
4603.1—4603.5**

- Assets, conveyance to United States
authority for, 4603.3

- management of pending transfer, 4603.4

- Cooperation, relief and unemployment officers
and agencies of state, 4603.2

- Corporation as state agency, 4603.1

- Objects, 4603.1

- Powers, 4603.1

- Ratification of acts of corporation, 4603.5

- Recognized as a state agency, 4603.1

Montana School for Deaf and Blind, 1473.1—1473.4

- Admissions to school, 1461

- qualifications for, 1473.3
- regulation concerning, 1461

Board of education

- duties of, 1473.1
- powers, 1470

Control, 1473.3

- Cooperation with blind commission, 1473.12

Local executive board, 1473.2

Montana state training school, 1473.4

Name of school, 1466

- change, 1473.2

Rules and regulations, 1473.3

- State board of education to prescribe, 1473.3

Students, 1473.3

Superintendent, 1473.3

Supervision and control, 1459

Teachers, 1473.3

Transfer of school, 1473.1

Montana school of forestry, dean of, member
of forestry board, 1840.1

Montana school of mines, 884

Montana state agriculture college, president of,
member of science commission, 1575.3Montana state agricultural school at Fort
Assiniboine, taxation to provide for, 2155a**Montana State Board of Food Distributors**

- Attorney general to represent board, 2599.15

- County attorneys, duties of, 2599.15

- Fees collected, disposition of, 2599.13

Members

- appointment of, by governor, 2599.3

- compensation, 2599.8

- expenses, 2599.8

- meetings, 2599.7

- recommendations, 2599.4

- removal, 2599.3

- vacancies, 2599.3

Officers, election of, 2599.5

- Payments to association, 2599.14

Personnel, 2599.2

Powers and duties, 2599.6

- Prosecutions, duties of secretary, 2599.15

- Salary and expenses of board, 2599.13

Montana State Board of Food Distributors—Cont.

- Secretary
 - bond of, 2599.9
 - compensation of, 2599.9
 - expenses of, 2599.9
- Treasurer's bond, 2599.13
- Warrants issued by, 2599.13

Montana State Board of Forestry

- Fire wardens, ex-officio, 1840.25
- Functions of, 1840.2

Montana state insane asylum, bond issue for, 1444a

Montana state normal college at Dillon, taxation to provide for, 2155a

Montana state normal school at Billings, taxation to provide for, 2155a

Montana state park commission, 1871.1—1871.9

Montana state school of mines at Butte, taxation to provide for, 2155a

Montana state school of mines, president of, member of science commission, 1575.3

Montana state training school, 1473.4

Montana state tuberculosis sanatorium, 1525.1

Montana State University, 877.1—877.10

- Journalism building, 877.6
 - authorization of, 877.6
 - conveyance to federal government, 877.8
 - cost of, 877.9
 - erection of, 877.6
 - federal funds, 877.7
 - maintenance of, 877.9
 - option of purchase, 877.8
 - purposes, 877.6
 - rental for, 877.8
 - site, 877.8

Purposes of act, 877.10

State forest and conservation experimental station assistants and employees, appointment and compensation, 877.2

director, dean of forestry school, 877.2

establishment as part of university, 877.1

personnel, duties, oaths, and reports, 877.5

purposes of station, 877.3

reports, publication, 877.4

Montana Stock Growers' Association

- Member to state grass conservation board appointed from, 7364.29-3
- Recommends member to forestry board, 1840.1

Montana Territory

- Admission as state, amendment of federal statute, acceptance by state, Enabling Act, § 11

Montana Wool Growers' Association

- Member to state grass conservation board appointed from, 7364.29-3
- Recommends member to forestry board, 1840.1

Montana Trade Commission

Administration of unfair practices act, 10915.12

Complaints, 10915.12

Cost survey

determination of facts, 10915.12a

procedure, 10915.12a

Decisions of commission

appeals from, 10915.12

Fair-price schedules, filing with commission

under unfair practices act, 10915.5a

Findings, 10915.12

Hearings, notice of, 10915.12

Investigations and hearings, 10915.12b

Powers and duties of, 10915.12

Service of process, 10915.12

Subpoena

disobedience of, 10915.12b

Witnesses, attendance of, 10915.12b

Montana trust and legacy fund, 1132.7

Montana University

See **University of Montana**

Moonshine liquor, seizure of, 2815.184

Mortgages

Application of emergency redemption of act, 9444.10

Benefit of act, 9444.3

Default, effect of, 9444.6

Deficiency judgments, when prohibited, 9444.9

Dower right of insane persons, 10416.1

Foreclosure, hearing on, 9444.4

Order of court concerning, 9444.4

Redemption, 9444.1

period

extension of, 9444.2, 9444.7

suspension, 9444.5

Subordination or waiver agreements,

recording, 8261.1

Terms

alteration, 9444.8

revision, 9444.8

United States as mortgagee, 9444.11

Mother's pension act, 10480—10487

Motions, 9127

Time to plead, 9192

Motor boats, gasoline tax refund, 2396.4

Motor carriers, importation of beer, 2815.25b

Motor Fuel

See **State Highway Treasury Anticipation Debentures**

Motor Vehicles

Accidents

uniform accident reporting act, 1754.27—1754.45

accidents

involving death or personal injuries, 1754.29

damage to vehicles, duty to stop, 1754.30

fixtures on highway, striking, 1754.33

Motor Vehicles—Continued**Accidents—continued**

uniform accident reporting act—continued

accidents—continued

information, duty to give, 1754.31

rendering aid, duty, 1754.31

reports, 1754.34

analysis of, duty of supervisor, 1754.41

by whom made, 1754.35

confidential, 1754.40

coroner's report, 1754.38

driver unable to report, 1754.36

forms, 1754.37

garages to report, 1754.39

immediate, 1754.34

law enforcement officer's report, 1754.35

occupant of vehicle to report,

when, 1754.36

supplemental reports, 1754.35

tabulation of reports by

supervisor, 1754.41

to

coroner, 1754.34

supervisor, 1754.35

when to be made, 1754.35

written report, when, 1754.35

short title of act, 1754.44

stopping

duty, 1754.29

failure

misdemeanor, 1754.30

penalty, 1754.29

revocation of license, 1754.29

unattended vehicle, duty upon

striking, 1754.32

Attachment of motor vehicles, 1758.3**Chattel mortgages**

certificate of ownership, surrender of, 1758.3

deposited with registrar, 1758.3

Cigarettes, throwing from motor vehicles, 1840.17**Definitions, 1754.24****Demonstrators, 1763.8b****Drivers' operating records, 1754.16****Fees, disposition of, 1758.3****Financial responsibility of owner, 1754.14**

bond to satisfy judgment, 1754.15

action on, 1754.15

collateral, deposit of, 1754.14

forgeries, 1754.22

information of, registrar to furnish, 1754.16

judgment, court clerk's duty, 1754.13

partial payment of, 1754.13

sale of real estate, 1754.15

subsequent judgment, 1754.13

liability insurance, 1754.21

operating record of driver furnished to

carrier, 1754.16

public liability insurance on vehicle of

excessive size or weight, 1751.6

liability policy

copy to insurance commissioner, 1754.23

Motor Vehicles—Continued**Financial responsibility of owner—continued**

liability policy—continued

definition of, 1754.23

provisions of, 1754.23

lien, foreclosure of, 1754.15

money, deposit of, 1754.14

to satisfy judgment, 1754.15

return of bond, deposit, or policy, 1754.19

Gross weights, 1751.4**Height of, 1751.2****Highways, restriction on use of, 1751.7****Insurance, 1754.14****Labeling of new vehicles by dealers, 1763.8a****Length of, 1751.2****License**

dealer's

application for, 1759.4

fees, 1759.4

plates

revocation of license, 1759.4

use of, 1759.4

driver's, 1741.11**failure to return, 1754.18****suspension of, 1754.12**

bail on arrest, 1754.12

clerk of court, duty of, 1754.12

conviction of violation of law, 1754.12

death by operation of motor vehicle, 1754.12

driving under the influence of intoxicating

liquors or narcotic drugs, 1754.12

non-resident, 1754.12

offenses in

Dominion of Canada, 1754.12

other states, 1754.12

proof of ability to pay damages, 1754.12

reckless driving

injury to property, 1754.12

personal injury, 1754.12

registrar of motor vehicles to suspend, 1754.12

without notice, 1754.12

fees

collection, 1759.3

disposition of, 1759.3

fund, 1759.3

Itinerant merchant required, 2429.29

plates, 1759.2

restoration, 1754.13

Liens against motor vehicles, 1758.3**Loads, 1751.4****Motor vehicle act, reciprocity of act, 1754.14****Non-resident motorists, 1760.11**

accidents, 1760.12

Reckless operation of, 1754.11—1754.26

administration of act, 1754.25

cancellation of bond, 1754.19

rules and regulations, 1754.25

Registrar

definition, 1754.28

duties of, 1758

power of attorney to accept service, 1754.14

Motor Vehicles—Continued

- Registration, 1755.4—1763.8b
 - application for, 1759
 - contents, 1759
 - tax status, 1759
- assessed, when, 1759
- assessment of, 2002
- attachment of motor vehicles, 1758.3
- certificate of, 1758
 - contents, 1758
 - fees, 1758.4
 - form, 1758
 - issuance of new, 1758.2
 - lost, 1758.2
 - transfer of, 1754.20
- chattel mortgages on, 1758.3
 - deposited with registrar, 1758.3
- conditional sales contracts, 1758.3
 - default under, 1758.3
 - registered with registrar, 1758.3
- fees, 1759
 - disposition of, 1758.3
- foreign vehicles, 1760.7
- license plates, 1759.2
- liens against motor vehicles, 1758.3
- new vehicles, 1763.8a
- non-resident motorists, 1760.11
- ownership certificate, surrender of, 1758.3
- ownership, transfer of, 1758.2
- reciprocal agreements with other states, 1760.7
- registered with the registrar, 1758.3
- revocation of dealer's license plates, 1759.4
- state-owned vehicles, 1757.1
- subsequent purchasers, 1758.3
- taxes
 - disposition of, 1758.3
 - paid before, 1759
- transfer of title by
 - administrator, 1758.2
 - bankruptcy court, 1758.2
 - execution sale, 1758.2
 - executor, 1758.2
 - operation of law, repossession, 1758.2
 - receiver, 1758.2
 - sheriff, 1758.2
 - trustee, 1758.2

Sales

- conditional sales
 - certificate of ownership, surrender, 1758.3
 - contracts, 1758.3
 - default under, 1758.3
 - registered with registrar, 1758.3
- financing agreements, 10915.20—10915.25
 - policy of law, 10915.20
 - restraint of competition, 10915.20
 - suits under act, 10915.25
 - damages, 10915.25
 - evidence, threats, 10915.23
 - notation of act, penalties, 10915.24
 - when void, 10915.22
- new cars by dealers, mileage certificate, 1763.8a

Motor Vehicles—Continued

- Service, power of attorney to accept, 1754.14
- Size, permits for excessive, violation, 1751.6
- Speed regulations, 1742.1
 - nighttime driving, 1742.5
 - presumptions, 1742.7
 - recklessness, evidence of, 1742.5
- speed limit zones
 - classification of, 1742.4
 - establishment of, 1742.3
 - maximum speed, 1742.4
- trucks, 1742.2
- violations of act, penalties, 1742.6
- Taxes
 - county treasurer to collect, 1759.3
 - disposition of, 1759.3
- Tire loading, 1751.4
- Title, transfer of, 1758.2
- Violations, 1751.9
 - clerk of court, duties of, 1754.12
 - cost on conviction, 1741.8
 - finer, amount of, 1741.8
 - jail sentence, limitations on, 1741.8
 - misdemeanors, 1751.9
 - penalties, 1751.9
 - reckless driving
 - arrest, 1754.12
 - bail, 1754.12
 - second offenders, 1741.8
 - third offenders, 1741.8
- Weight of, 1751.4
 - officers to weigh, 1751.5
- Width of, 1751.2

Motor Vehicle TransfersSee **Administrators****Motor Vehicle Violations**See **Conviction**

Violation of Motor Vehicle Act

Motor VehiclesSee **Accidents****Assessor****Bonds****Certificate****Conditional Sales Contracts****Drivers of****Motor Vehicles, Registration**See **Certificate****Movie Theater Licenses**

- Application, 2439.2
- Display of, 2439.3
- Exemptions, 2439.8
- Fees, 2439.5
 - to general fund, 2439.7
 - to state treasurer, 2439.7
- Form, 2439.2
- Issuance of, 2439.3
- Renewal of, 2439.4

Movie Theater Licenses—Continued

- Required, 2439.1
 - for each theater, 2439.2
- State board of equalization to license, 2439.1
- Violations, 2439.6

Municipal Airports

- Cooperation with highway department, 1800.1
- Roads connecting, 1800.1

Municipal Bonds and Indebtedness

- Bankruptcy
 - federal act available, 5278.31
 - indebtedness to state, composition of, 5278.32
 - procedure, 5278.31
- Bonds
 - refunding, 5278.1
 - elections, 5278.1
 - city and county clerks, duties, 5278.10
 - electors, qualifications of, 5278.10
 - petition for, 5278.6
 - circulators
 - affidavit of, 5278.6
 - must be qualified electors, 5278.6
 - filed with city clerk, 5278.6
 - form of, 5278.6
 - signers
 - city clerk to check qualification signers, 5278.6
 - clerk's certificate, 5278.6
 - number of qualified electors required, 5278.6
 - registration for
 - close of, notice, publication, 5278.10
 - registration days, notice of, published by county clerk, 5278.10
 - procedure to issue, 5278.1
 - validation of, 5278.33
- Condemnation for public use, 5039.74
- Contracts
 - awarding to lowest bidder, 5070
 - bids
 - advertisement for, 5070
 - posting call for, 5070
- Creation of indebtedness, 5278.1

Municipal Corporations

- Defective highways and public works, 5080
 - claims for damages, requisites, 5080
 - notice of claim, 5080
 - record of reported defects, 5080
 - warning, duty of city to post, 5080
- Elections
 - boards, 5011
 - additional boards may be appointed, 5011
 - commission or commissioner plan of government, election precincts in cities having, 5011
 - conducted in accordance with general laws, 5011
 - judges and clerks, appointment, 5011
- Fire department, 5109—5138.2
 - act passed in exercise of police power, 5109.1
 - cities and towns must have, 5109

Municipal Corporations—Continued

- council has charge and supervision of, 5109
 - provide by ordinance for government of, 5109
- disability and pension fund, 5118
 - of what consists, 5118
 - special tax to maintain, 5119
- disability pension, 5133
 - amount of, limitation on, 5133
 - not entitled to while receiving workmen's compensation, 5133
- volunteer firemen, amount limited, 5133
- effective date of act, 5109.1
- eight hour shifts
 - in cities of first class, 5138.1
 - in cities of second class, 5138.2
- firemen, 5110.1
 - one day off out of each eight, 5138.1, 5138.2
 - probationary period, 5110.3
- pensions
 - retired firemen, 5132
 - amount of, limitation on, 5132
 - widows and orphans, 5134
 - amount, 5134
 - not entitled to, when, 5134
- platoons
 - in cities of first class, 5138.1
 - in cities of second class, 5138.2
- violations of act a misdemeanor, penalty, 5110.2
- volunteer, 5116.2
 - cities of second class may make provision for, 5116.2
 - compensation, 5116.2
 - definition of, 5116.2
 - duties, 5116.2
 - exempt from provisions of act, 5116.2
 - members eligible as trustees of fire department relief association, 5116.2
 - pension, not entitled to, 5116.2
 - service under supervision of chief of paid department, 5116.3
- wages
 - in cities of the first class, minimum, yearly increase, 5110.1
 - in cities of second class, minimum, yearly increase, 5110.3
- Funds
 - inactive accounts, transfer to general fund, 5035.1
- Parks and playgrounds, 5161—5166.5
 - board of park commissioners, 5161
 - appointment, 5161
 - clerk
 - city clerk acts as, 5161
 - duties, 5161
 - creation of, 5161
 - duties, 5161
 - officers, 5161
 - organization, 5161
 - personnel, 5161
 - property, park commission's power to lease not abrogated, 5039.61

Municipal Corporations—Continued

- Parks and playgrounds—continued
 - board of park commissioners—continued
 - qualifications, 5161
 - records and reports, 5161
 - terms of office, 5161
- Playgrounds, 5166.1
 - buildings and other equipment may be
 - acquired, 5166.1
 - custody of property, 5166.3
 - donations for, power to accept, 5166.3
 - instructors, 5166.3
 - operation, 5166.1
 - cities and school districts may operate, 5166.1
 - independently or in cooperation, 5166.2
 - school buildings may be used, 5166.4
 - power of state board of education over
 - use, 5166.4
 - use of, secondary to educational purposes, 5166.5
- Police commission
 - compensation, limitations on, 5098
 - in cities of first and second class, required, 5098
 - in other cities, may be created by
 - ordinance, 5098
 - terms of office, 5098
- Police force
 - deceased policemen, 5108.5
 - dependent widow and minor children
 - payments to, 5108.5
 - to minor children if no widow, 5108.5
 - “policeman” includes those on reserve list
 - and active duty, 5108.5
 - reinstatement on, 5101.1
 - physical examination required, 5101.1
 - probationary period, 5101.1
 - rights on reinstatement, 5101.2
 - reserves, 5108.2
 - age required to become a member, 5108.2
 - credit given for time served in army or
 - navy, 5108.2
 - payment of, 5108.5
 - qualification of members, 5108.2
 - tax levied to create fund for payment, 5108.7
 - wages, minimum in cities of the first
 - class, 5108.16
- Property, council may lease or dispose of
 - city, 5039.61
- Sewer, water, gas, and other connections, 5486
 - commission-manager plan of government, 5486
 - cost of making connections, 5486
 - paid in installments, 5486
 - notice and order by director of public
 - service, 5486
 - sinking funds, investment of, 4622.1
- Special improvement districts, 5229—5249
 - assessment and taxes, 5245
 - interest on, 5245
 - how collected, 5245
 - maximum rate, 5245

Municipal Corporations—Continued

- Special improvement districts—continued
 - bonds
 - form of, 5249
 - interest, rate of, 5249
 - maximum maturity date, 5249
 - registered with clerk and treasurer, 5249
 - protests against proposed work, 5229
 - hearing of, 5229
 - time within which filed, 5229
 - when council may overrule, 5229
 - withdrawal of, 5229
 - warrants, form of, 5249
- Streets
 - council may change names or numbers, 5039.5-1
 - plat showing change and territory
 - affected, 5039.5-2
 - property owners may object, 5039.5-1
- Taxation, 5194
 - distribution of funds, 5194
 - lavy for park purposes, 5194
 - limitation on amount of for municipal
 - purposes, 5194
 - poll tax
 - collection of, 5221
 - duties of clerk and treasurer in
 - collection of, 5221
- Treasurer
 - funds, deposit of, 4767.4
 - salary of, 5022
 - cities of third class operating
 - utilities, 5022
 - fixed by ordinance, 5022
 - limitation on amount of, 5022
- Municipalities, relief warrants, issued by, 335.17-2
- Municipal Revenue Bond Act of 1939**
 - Public service undertakings
 - authority to undertake enterprises, 5288.21
 - bonds
 - form and contents of, 5288.21
 - Lien of
 - bonds of the same issue, 5288.24
 - on revenues of undertaking, 5288.24
 - not general obligations of
 - municipality, 5288.25
 - validity of, 5288.23
 - certificate of necessity or convenience not
 - needed, 5288.29
 - consent of another municipality for construction
 - within its limits, 5288.28
 - construction of act, 5288.30
 - definitions, 5288.19
 - partial invalidity of act, 5288.31
 - powers of municipalities, 5288.20
 - resolution authorizing issuance of
 - bonds, 5288.22
 - covenants in, 5288.22
 - remedies of bondholders, to be
 - specified, 5288.22

Municipal Revenue Bond Act of 1939—Continued

- Public service undertakings—continued
 - revenue from undertaking, use of, 5288.27
 - short title, 5288.18
 - undertaking to be self supporting, 5288.26
 - validity of bonds, 5288.23

Municipal Revenue Bond Refinancing**Municipalities and state water conservation board**
act of 1937

- construction, 5288.16
- partial invalidity, 5288.17
- powers under act
 - additional powers and duties, 5288.18
 - grant of, 5288.3
 - supplemental to other laws, 5288.16
- rights under act supplemental to other laws, 5288.16
- short title, 5288.1

refunding bonds

- authorization, procedure, 5288.4
- constitutional limitations, 5288.8
- default
 - accounting, 5288.15
 - receiver
 - appointment, 5288.14
 - powers and duties, 5288.14
 - termination of receivership, 5288.14
- recourse on general fund of municipality, 5288.9
- remedies
 - cumulative, 5288.15
 - injunction, 5288.15
 - suit on bonds, 5288.15
 - waiver of, 5288.15
 - rights impaired by delay, 5288.15

definitions, 5288.2**denominations of, 5288.5****duties of municipality and officers, 5288.12****fiscal agent, 5288.11****lien upon revenues of enterprise, 5288.8****maturity of, 5288.5****nature.****negotiable instruments, treated as, 5288.5****not debts of municipality, 5288.9****special obligations, 5288.8****old bonds and notes not to be destroyed**
or marked "paid," 5288.8**priority, 5288.8****recitals of, 5288.8****revenue from enterprise****held in trust for payment, 5288.12****may be pledged, 5288.8****sale or exchange of, 5288.7****price, 5288.7****public or private sale, 5288.7****security for, 5288.8****additional security, 5288.8****equality as to security, 5288.8****Municipal Revenue Bond Refinancing—Continued**

- Municipalities and state water conservation board—continued
 - refunding bonds—continued
 - taxation, exempt from, 5288.10
 - terms of, 5288.5
 - validity, 5288.6
 - change of officers not to affect, 5288.6

Museum collections, 1575.6**Musical Compositions****See Protection of Copyrights****Musical societies, incorporation of, 6453****Music, course of study, 1054****Music supervisor, public schools, 933****Mustard Seed, 3649.1a**

- Purchasers of crop before harvest, 3649.1a
- license, 3649.1a

Mutual Hail Insurance

- Safety or reserve fund, 6175a
 - investment of, 6175b
 - securities permitted, 6175b
- limit of, 6175a
- power to creat fund, 6175a
- use of, prohibition as to, 6175a

Mutual rural insurance companies, authority to
procure reinsurance, 6205.1**Mutual saving banks, corporation license tax**
exemptions, 2296**N****Names****See Ballots****Candidates****Arrangement on ballots, 681****Rural electric associations, 6396.4****Narcotic Drugs****See Uniform Drug Act****National and state offices on ballots, 681****National Bank Stock****See Classification of Property for Taxation****National electric safety code, 2707.1****National Guard****See Militia****National park service officers, fire wardens,**
ex-officio, 1840.25**National gas pipe line, assessment of, 2138****Needy blind individuals, public welfare act, 349A.74****Needy dependent children, public welfare act, 349A.74****New Trials**

- Continuance, 9400
- Hearing of motion, 9400
- Notice of intention, 9399
- Papers used, 9400

Newspapers, publication notice, sale of school
bonds, 1224.17
Nighttime driving, speed limit, 1742.5
Nominations of officers, 654

Non Resident

Alien
estate of
county to receive, 7090.3
disposition of money, 7090.4
executor or administrator, duties of, 7090.3
right of inheritance, 7090.2
Motorists, 1760.11
license, suspension, 1754.12
service of process
effect of, 1760.13
personal service, 1760.14
Tax payers, income tax, 2295.7

Nonresident Aliens

See **Administrators**

Nonresidents

See **Accidents**

Normal contribution rate, teachers' retirement
system, 1132.8

Northern Montana forestry association, recommends
member forestry board, 1840.1

Notaries public, deputy registrars, to act as, 557

Notice

See **Judicial Notice**

Eggs, to purchaser of grade of, 2634.8
Meeting of rural electric associations, 6396.8
Operator's license, suspension of, 1754.12
Prospecting permits, to lessee, 1805.51-16
Registry cards, cancellation of, 570
Sale of unredeemed property by county
commissioners, 2235
State highway treasury anticipation
debentures, 2381.4e
Waiver of, 6396.24

Notification of election, 654

Noxious Weeds

Control and extermination, 4506.1
board of weed control, 4506.9
county commissioners, 4506.15
cooperation with other programs, 4506.17
county-owned lands
commissioners to destroy weeds, 4506.15
cost of destruction, commissioners
fix, 4506.16
highways
commissioners to destroy weeds, 4506.15
cost of destruction, commissioners
fix, 4506.16
fund
creation, 4506.13
expenditure, 4506.13
growth of weeds, unlawful, 4506.2

Noxious Weeds—Continued

Control and extermination—continued
supervisors, 4506.9
appointment, 4506.9
compensation, 4506.9
furnish materials to land owners to
destroy weeds, 4506.14
inspection of premises, 4506.10
notice to person permitting weeds to
grow, 4506.10
if not obeyed, destruction by
supervisors, 4506.11
cost, collection of, 4506.11
term of office, 4506.9
weeds, mingled with crop, destruction, 4506.12
partial invalidity of act, 4506.20
quarantine
farm products conveying seeds, 4506.3
seeds, 4506.3
introduction from other states, 4506.4
saving clause of act, 4506.20
seeds, 4506.1
weed control districts
creation of, 4506.5
in cities and towns, procedure, 4506.8
petition for, 4506.5
hearing, 4506.7
notice, 4506.6
violations of act, penalty, 4506.18
Enumeration of, 4506.1

Nuisances, under uniform drug act, 3202.31

Nursery stock, sale of, 3614

Nurses, when exempt from jury duty, 8893

O

Oath of voters, school trustees, 1003

Oaths and bonds of executors and
administrators, 10088—10106.3

Obligations, Convertible

See **Corporations**

Occupational Disease

Characteristics of, 2484.6
Definition of, 2484.6
Investigation of, 2484.4
Report of, 2484.3

Odd Fellows lodges, incorporation of, 6453

Office, Term

See **Committeemen**

Office, Vacancy

See **Committeemen**

Officers

See **Abandonment of Counties**

Counties

County Officers

Accidents, report of, 1754.35

Officers—Continued

- Assistants to
 - appointment, 273.1
 - board of examiners, powers of, 273.1
 - employment for civil executive officers, 273.1
 - expenses of office not to exceed
 - appropriation, 273.1
 - governor's approval, 273.1
 - in office on passage of act, 273.3
 - approval of governor, 273.3
 - discharge, 273.3
 - removal of, 273.2
 - power of governor, 273.2
- Audit of accounts by state examiner, 214
- Forest protection districts, 1840.5
- Indian service, 1840.25
- Rural electric association, 6396.11
- State park commission, 1871.3

Officers and Employees

See **Compensation**

Officers, State

See **Official Reports of**

Official bonds, 464, 466

Officers Taking Acknowledgments

See **Acknowledgment and Proof of Instruments**

Official Report of State Officers

- As evidence, 10576.1
- Cross examination, 10576.3
- Distribution of, 521
- Publication of, 520
- State board of examiners
 - may demand, 520
 - to approve, 520

Oil

See **Oil and Natural Gas Conservation Board**

Oil and Natural Gas Conservation Board

- Crude petroleum, tax on, 3554.14
- privileges and license tax, 3554.14
 - deductions, 3554.14a
 - expenditures, 3554.14a
 - how computed, 3554.14a
 - payment, when, 3554.15
 - producer to make quarterly statement to
 - state treasurer, 3554.15
 - may include more than one place of
 - business in, 3554.15
 - payment of assessment for preceding
 - period to accompany, 3554.15

Oil and Gas

- Bureau of mines, 884
- Lease, 9479.1
 - oil leases, 1805.51-10
 - release of, 6893

Oil pipe line, assessment of, 2138

Old Age Assistance

See **Change of Residence**
Public Welfare

Old Age Benefits

See **Benefits**

Old age pension commission, payment to county
commissioners, 349A.46b

Old age pensions, chapter repealed, 335.18—335.45

Old Age Relief

See **Application for**

Old age relief, warrants where county funds
insufficient, 349A.46d

Operating motor vehicle in unsafe condition, 1741.7

Operating records of drivers, 1754.16

Operation of junior colleges, 930.17

Operator's license, motor vehicles, return to
registrar, 1754.18

Ophthalmologists

Definition of, 349A.56

Designation of

aid to blind, 349A.57

approval of application, 349A.61

Examinations, fees for, 349A.57

To certify blindness, 1473.11

Optional benefits, retirement system,
teachers', 1132.6

Optometry

Acts prohibited, 3156

Board of examiners, 3157

appointment to, 3157

creation of, 3157

examinations, 3159

fee for, 3159

waived, when, 3159

oaths of, 3157

qualifications for appointment, 3157

revocation of certificate of

registration, 3166

grounds for, 3166

rules and regulations, board of examiners

may make, 3159

governing qualifications of applicants, 3159

terms, 3157

vacancies, appointments to fill, 3157

Examinations, 3159

fee, 3159

waived, when, 3159

Registration

applicants, qualifications of, 3159

certificate of registration

barter or sale, unlawful, 3156

practice without, unlawful, 3156

recorded in office of county clerk and

recorder, 3162

fee, 3162

Optometry—Continued

- Registration—continued
 - certificate of registration—continued
 - revocation of, 3166
 - appeal to the courts, 3166
 - grounds for, 3166
 - hearing, 3166
 - notice of, 3166
 - regranted after ninety days, when, 3166
 - Violation of act, penalty for, 3167

Order for service by publication, 9488.1

Order of confinement in asylums, insane persons, 1438

Organized forest protection district, definition of, 1840.3

Orphans

- Compensation to children, brothers and sisters, under workman's compensation act, 2891
- World war orphans' education
 - fund, 5668a-1—5668a-3

Orthography, course of study, 1054

Orthopedic Commission

See **Montana Orthopedic Commission**

- Public welfare act, 349A.74

Osteopaths, property exempt from execution, 9428.1

Overhead expense, definition of, 10915.3

Owner of Forest Lands

- Definition of, 1840.3
- Required to comply with rules, 1840.10
- Responsibility, 1840.4

Ownership

- Conditions and limitations of, 6711, 6713
- Of property and interest therein, 6674

P**Park Commission**

See **State Park Commission**

Parking on main highways, 1741.7

Parks and forests, state, 1842.4—1842.8

Parks

See **Municipal Corporations**

State Parks and Forests

- Municipal, 5161—5166.5
- State
 - development of, 1842.5
 - exchange of properties, 1842.8
 - expenditures, 1842.5
 - lease of properties, 1842.8
 - obligations, 1842.7
 - powers of board, 1842.8
 - products, 1842.5
 - revenue, 1842.6
 - rules and regulations, 1842.5
 - sale of, 1842.8
 - products, 1842.5

Parol, out-of-state parolee supervision, 12266.1, 12266.2

Parolee Supervision

See **Criminal Law**

Uniform Act for Out-of-State Parolee Supervision

Parties, tax deeds, actions concerning, 2215.2

Partner

See **Administrators**

Partners, surviving partner not to administer estate, 10068

Patrolmen

See **Highway Patrolmen**

Patrol Board

See **Highway Patrol Board**

Payment of Wages—Security for

See **Wages of Mine and Metal Workers—Security for Payment**

Peddlers

See **Itinerant Merchants**

Penitentiary employees, exempt from jury duty, 8893

Penmanship, course of study, 1054

Performing rights, definition of, copyrights act, 6815.1

Permits, Prospecting

See **Prospecting Permits**

Person

- Definition of
 - copyrights act, 6815.1
 - fair trade act, 7590.1
 - milk control act, 2640.3
 - Montana beer act, 2815.11
 - motor vehicle act, 1754.24

Personal Injuries

See **Accidents**

Accidents causing, 1754.29

Compensation for, income tax, 2295.7

Operation of motor vehicle, 1754.12

Personal Property

See **Cemetery Associations**

- Definition of, 1996
- Sale of, estates, 10204
- Subordination agreements, mortgages, 8261.1
- Taxes
 - collection of, 2238—2252.7
 - duty of treasurer, 2239
 - lien on realty, 2153
 - preferences, 2153
 - redemption, 2252.3
 - city treasurer, duty of, 2252.4
 - notice
 - mailing to taxpayer, 2252.4
 - publication of, 2252.4
 - sale of property for, 2252.5

Personal Property TaxesSee **Collection of**

Persons to whom letters of administration are granted, 10068

PetroleumSee **Oil and Natural Gas Conservation Board****Pharmacies**See **Pharmacy****Pharmacists**See **Pharmacy****Pharmacy**

Certified pharmacy, 3202.7a

Construction of act, 3202.13

Definitions, 3170.1

Drugs

adulteration of, unlawful, 3202.7e

labeling, wrongful, unlawful, 3202.7d

sale of drug, medicines, etc., unlawful, exception, 3170

Exemptions from act, 3202.7f

Fees and fines, disposition of, 3202.12

License

applicants for

examination of, 3176

failure, may be reexamined, 3176

fee, 3176

qualifications for, 3176

state board of pharmacy, 3176

waived when, 3176

qualifications of applicants for license, 3176

pharmacies

fee, 3202.7a

revocation, 3202.7a

revocation of, 3174

stores selling drugs, 3202.7a

fee, 3202.7a

revocation, 3203.7a

Partial invalidity of act, 3202.13

Reciprocity, 3176

Registration fee, 3177

annual payment of, 3177

Repeals, 3202.13a

Saving clause of act, 3202.13

State board of pharmacy, 3173

appointment, 3173

attorney general act as attorney for, 3202.10

expenses, 3174

inspection by, 3174

judicial review of acts, 3202.7b

procedure, 3202.7b

licenses, 3174

revocation, 3174

personnel

pharmaceutical association submit lists to governor, 3173

qualifications of members, 3173

removal, 3173

grounds for, 3173

notice and hearing, 3173

Pharmacy—Continued

State board of pharmacy—continued

removal—continued

salaries, 3175

terms of office, 3173

powers, 3174

Violation of act

misdemeanor, 3202.11

penalty, 3202.11

prosecutions, 3202.10

county attorneys, duty of, 3202.10

secretary of board aid in, 3202.10

Use of words "drug store," pharmacy," etc.,

unlawful without license, 3202.7c

Pharmacy Act, DutiesSee **County Attorney****Photography**

Board of examiners, 3252.2

creation of, 3252.2

employees, 3252.3

meetings, 3252.3

quorum, 3252.3

members, 3252.2

compensation, 3252.3

qualifications, 3252.2

removal, 3252.6

grounds for, 3252.6

terms of office, 3252.2

officers, 3252.3

duties of, 3252.3

organization, 3252.3

reports to governor, 3252.6

revenue, 3252.3

Definitions, 3252.1

Exemptions from act, 3252.14

persons exempted, 3252.14

prior practitioners, 3252.11

fee, 3252.11

Fees, 3252.3

annual, 3252.9

notice by secretary when due, 3252.9

Fund

disposal of balances, 3252.3

license, 3252.3

secretary-treasurer to remit to state

treasurer, 3252.3

Licenses, 3252.4

applicant to appear before board, 3252.7

application for

fee to accompany, 3252.7

filed with secretary, 3252.7

apprentices, 3252.4

displayed in camera room, 3252.8

establishment license, fee, 3252.9

examinations for, 3252.4

conducted by board, 3252.4

forms of technical examinations, 3252.5

for two grades at same time for one

fee, 3252.5

Photography—Continued**Licenses—continued**

- examinations for—continued
 - second and further examinations, 3252.7
 - fee for, 3252.7
- testimony under oath, 3252.4
- fees, 3252.9
 - annual fee
 - failure to pay, license revoked, 3252.9
 - reinstatement, fee for, 3252.9
 - renewals, 3252.9
- issued by board, discretion, 3252.4
- license fund, disposal of balance, 3252.3
- not transferrable, 3252.7
- practice without
 - illegal, 3252.12
 - what constitutes, 3252.12
- recorded in office of county recorder, 3252.8
- revocation, 3252.10
 - evidence transcribed and filed with
 - secretary, 3252.10
 - grounds for, 3252.10
 - hearing, 3252.10
 - notice, 3252.10
- signed by all members of board, 3252.7
- temporary certificates, 3252.4
 - issue, rules for, 3252.4
- three grades of occupation, 3252.5
- prior practitioners receive, 3252.11
 - application within thirty days, 3252.11
 - fee, 3252.11
 - procedure, 3252.11
 - qualifications, 3252.11
- Practicing under assumed name, unlawful, 3252.7
- Saving clause, 3252.15
- Violations, penalty, 3252.13

Physicians

- Exempt from jury duty, 8893
- Report of occupational diseases, 2484.7

Physician's Certificates**See Barbers and Barber Shops**

- Physiology, course of study, 1054
- Pilot of aircraft, liability for damages, 2736.7

Playgrounds**See Municipal Corporation****Pleadings****See Complaints**

- Complaint in quiet title, 9479.1
- In general, 9127

Pneumatic tires, loading on, 1751.4

Podiatry

- Acts not prohibited, 3154.11
- Acts prohibited, 3154.2
 - amputations, 3154.2
 - general anesthetics, 3154.2
- Application of act, 3154.10

Podiatry—Continued**Board of examiners, 3154.3**

- appointment, 3154.3
- creation of, 3154.3
- personnel, 3154.3
- terms, 3154.3
- vacancies, filling of, 3154.3

Definitions, 3154.1**License, 3154.2**

- applicants, qualifications, 3154.3
- display of, 3154.5
- examinations, 3154.3
 - examiners, 3154.3
 - fees, 3154.4
 - non-resident practitioners, examination
 - waived, when, 3154.3
 - subjects of, 3154.4
- fees, 3154.3, 3154.5
- form, 3154.5
- recorded in office of county clerk, 3154.5
- refusal of, 3154.6
- re-issuance, 3154.5
- renewal, 3154.5
 - fee, 3154.5
- revocation, 3154.6
 - reissue after six months, 3154.6

Police**See Municipal Corporations**

Policies, concurrent, motor vehicle liability, 1754.23

Political Subdivisions

- Agreement with United States, rural
 - rehabilitation projects, 349B.13
- Funds, administration by state,
 - Const., Art. XXI, § 7

Poll Book

- Clerk of district court to receive, 782
- Comparison with registration lists, 562.1
- Poll tax, collection by municipalities, 5221
- Porter, sale of, 2815.13

Powers and Duties of

- School trustees, 1015
- State department of public welfare, child
 - welfare services, 349A.72
- Teachers, 1075

Power of Attorney

- To accept service, motor vehicle act, 1754.14
- To secretary of state, non-residents
 - motorists, 1760.12

Precious stones, definition of, 1805.51-1

Predatory wild animals, bounties for killing, 3417.17

Prehistoric ruins, destruction of, 1575.8

President, rural electric association, 6396.11

Presumptions, speeding, 1742.7

Pre-Trial Procedure**See Civil Actions**

Price fixing, milk control board, 2640.7
 Priests, exempt from jury duty, 8893
 Prima facie evidence, tax deed as, 2215.9

Primaries

See **Direct Primary**

Elections

Principal assistant of highway commission,
 bond of, 464
 Principals, high schools, employment of, 1262.83
 Printed ballots, preparation of, 678

Printing Contracts—County Commissioners

Assessment lists, 4482.9
 Awarded newspaper most suitable for the
 work, 4482.20
 Bids, 4485.19
 by sections or the entire act, 4482.19
 Bond for performance, 4480.20
 Bound books, 4482.13
 County commissioners to make contracts
 for, 4482.1
 price limits, 4482.1
 what included in, 4482.21
 County fairs, expositions, etc., applicability
 of act, 4482.22
 Election supplies, 4482.16
 absent voters envelopes, 4482.16
 ballots, 4482.16
 certificates of election, 4482.16
 covers for register, 4482.16
 instructions to voters, 4482.16
 list of electors, 4482.16
 registration supplies, 4482.16
 Envelopes, 4482.3
 printing corner card on, 4482.10
 Forms without county name, 4482.17
 budget record, 4482.17
 justice dockets, 4482.17
 motor vehicle license register, 4482.17
 report of justice fees, 4482.17
 school budget applications, 4482.17
 school forms, 4482.17
 teachers' registers, 4482.17
 General forms, receipts and requisitions in
 duplicate or more copies, 4482.7
 General office forms, original only, 4482.6
 Index cards, 4482.11
 Legal advertising
 maximum rates for, 4482.2
 size of type, 4482.2
 Legal blanks, 4482.5
 Letterheads, 4482.4
 Limited to two years or less, 4482.20
 Maximum rates, 4482.2
 legal advertising, 4482.2
 official publications and legal advertising, 4482.2
 folio measurement, 4482.2
 size of type, 4482.2
 Paper stock, definitions, 4482.18
 Precinct register sheets, 4482.16
 Real estate tax receipts in quintuple, 4482.8

Printing Contracts—County Commissioners—Cont.

Record books only, size 18x11½, 4482.14
 Repeals, 4482.24
 Rule and figure work, 4482.2
 Ruled and printed forms, special, 4482.12
 School warrants, 4482.15
 binding, 4482.15
 Special ruled and printed forms, 4482.12
 Supplies not covered by act, 4482.19
 prices, 4482.19
 Tax receipts, real estate in quintuple, 4482.8
 Unsatisfactory work, county not compelled to
 accept, 4482.20
 Violations of act, penalty, 4482.23
 Warrants, county and school, 4482.15
 binding, 4482.15
 Work to be done within the state, 4482.20

Printing of official reports, 520

Prison employees, exempt from jury duty, 8893

Private road, easement on state land, 1805.62

Probate Proceedings

Clerk of county court, powers of, 10376
 Guardianship, 10376
 Sale of personal property, 10204

Probation

See **Criminal Law**

Procedure

See **Criminal Procedure**

District court, adjudication of water
 rights, 7135.8
 Pre-trial procedure, 9327

Procedure, rule of, tax deeds, actions
 concerning, 2215.2

Proceedings

See **Probate Proceedings**

Proceedings Against Delinquent Children

Child, criminal complaint against, 12288
 investigation by probation officer, 12288
 trial, 12288
 judgments and sentences, 12288
 Probation officers, 12288
 appointment, 12288
 deputies may be appointed, 12288
 salaries, 12288
 duties, 12288
 salary, 12288
 sheriff acts as chief probation officer,
 when, 12288
 reimbursed actual traveling expenses, 12288
 terms of office, 12288

Proceedings to determine title to stream
 beds, 1805.51-14

Proceeds from Industries

See **Commission for the Blind**

Proceeds of sale, unredeemed property, 2235

Process butter, definition of, 2620.4

Process, service, of registrar to accept service, 1754.14

Proclamation, referendum vote, 2155c

Procuring tax deeds, 2182—2235

Producer

Definition of, fair trade act, 7590.1

Milk control act, definition of, 2640.3

Producer-distributor, milk control act, definition of, 2640.3

Produce Wholesaler

Definition of, 2443.3

License, 2443.3

Production and sale of dairy products, regulation of, 2620.4—2634.15

Products

See **Dairy Products**

Prohibition, Writ of

Defined, 9861

Where and when used, 9862

Project, definition of, rural rehabilitation, 349B.1

Proof of ability to pay damages, motor vehicle act, 1754.12

Proof of instruments, 6910, 6915

Property

See **Assessment of**

Building and Loan Associations

Personal Property

Property

Definition of, 1996

Injury to, operation of motor vehicle, 1754.12

Ownership of interest, 6674

Rural electric associations, disposition of, 6396.21

Property assignments within two years, old age assistance, 349A.36

Property Leases and Sales

See **County Commissioners**

Property Taxes

See **Collection of**

Proration of proceeds, unredeemed property, 2235

Taxes, collection of, 2182—2235

Prospecting

Period

removal of minerals during, 1805.51-3

Permits

fees, 1805.51-15

issued prior to act, 1805.51-15

lease

to better bidder, 1805.51-15

to permittee, 1805.51-15

limitations, 1805.51-15

notice to lessee, 1805.51-16

on state lands, 1805.51-1—1805.51-18

Prospecting—Continued

Permits—continued

outstanding permits and leases, 1805.51-15

preference right, 1805.51-15

repeals, 1805.51-18

royalties, disposition of, 1805.51-17

Protection of Copyrights, 6815.1—6815.10

Musical compositions

affidavit of copyright, 6815.2

definitions

public performance for profit, 6815.1

person, 6815.1

performing rights, 6815.1

descriptive list, 6815.2, 6815.3, 6815.6

filing with secretary of state, 6815.2

filing fee, 6815.6

inspection by public, 6815.3

publication of list, 6815.3

performing rights, 6815.2

charges for, 6815.4

basis of determination, 6815.4

public performance unlawful when, 6815.8

sale of, 6815.2

suits concerning, 6815.5

pleading compliance with statute, 6815.7

secretary of state to accept service, 6815.5

violation of act, misdemeanor, 6815.9

Protection of forest lands, 1840.5

Province, definition of, motor vehicle act, 1754.24

Proxies

See **County Central Committee**

Public

Funds

how invested, Const., Art. XXI, § 8

trust and legacy fund, interest, apportionment, Const., Art. XXI, § 9

Highway, easement on state land, 1805.62

Indebtedness, cities and towns, see **Municipal**

bonds and indebtedness, 5278.1—5278.33

Institutions, inmates of

application for assistance, 349A.38

assistance granted, when, 349A.38

Liability insurance, motor vehicles, 1751.6

Officers

false arrests, 10921

salaries, when paid, 442.1

violation of registry act, 583.1

Performance for profit, definition of,

copyrights act, 6815.1

Policy, state temperance commission, 2815.209

Printing, county commissioners award contracts

for, 4482.1

Purposes, easements for, 1805.58—1805.63-1

Schools, 933

constitution day, 1070.1

courses of study in, 1054

interest and income fund, 1200.4-1

Service commission, rural electric association,

jurisdiction over, 6396.29

Public Accounting

- Certified public accountants, 3241.1
 - certificate issued without examination, 3241.1
 - qualifications required, 3241.1

Public Administrator**See Administrators**

- Annual return, 10000
 - posting copy, 10000
- Bond of, 466

Public Auction

- Sale of highway lands, 1797.1
- Estate property, 10204

Public Airports, 5668.40-1—5668.40-10

- Definitions, 5668.40-6
- Enforcement of act, 5668.40-3
- Landing strips, emergency, 5668.40-7
- Lights, restrictions, 5668.40-8
- Operation, safety of, factors considered, 5668.40-2
- Police power, enactment is exercise of, 5668.40-9
- Purpose of act, 5668.40-1
- Structures
 - condemnation to existing, 5668.40-5
 - existing structures near to, 5668.40-5
 - height of, 5668.40-2
 - high structures near prohibited, 5668.40-1
 - lights on, 5668.40-2
 - within two miles
 - permits for, 5668.40-4
 - application for, 5668.40-4
 - restrictions on, 5668.40-4
- Zones
 - approach zone, dimensions, 5668.40-2
 - safety zone, 5668.40-2
 - turning zone, restrictions, 5668.40-2
 - zone standards, measurements in
 - determining, 5668.40-2
- Violations of act, penalty, 5668.40-10

Publication of the codes, distribution at cost, 5553.8

Publication

- Notice
 - emergency relief warrants, 335.17-4
 - tax certificate, 2233.2
 - sale of unredeemed property by county
 - commissioners, 2235
- Reports, state board of education, 877.4
- Sale of real property of estate, 10269
- Tax deeds, 2208.1

Public Contractors' License

- Applicant, investigation of, 2433.6
- Application, 2433.6
- Classes of, 2433.5
- Duration, 2433.6
- Fees, 2433.5, 2433.6
- Granting, 2433.6
- Not required, when, 2433.5
- Renewals, 2433.6
- Rights granted under, 2433.5

Public camping grounds, control of, 1871.4

Public Instruction

See State Superintendent of Public Instruction

Public Offenses

See Jurisdiction of

Public Schools

See Uniform System of

Public Utilities

See Regulation of

Public utilities companies, corporation license
tax, 2296

Public Welfare

See County Boards of Health

County Welfare Department**Act of 1937**

- effective date, 349A.78
- fraudulent acts, 349A.15
- limitations of act, 349A.21
- saving clause, 349A.77
- short title, 349A.74
- validity of, 349A.77

Administration

- assistance
 - grants, method of issuing, 349A.19
 - not assignable or subject to
 - execution, 349A.18
- county department of, 349A.9
 - applications denied, right to appeal, 349A.12
- established, 349A.9
- functions and activities, 349A.11
- revocation of assistance, 349A.17
- reports and records, 349A.20
- tax levies, 349A.11
- county welfare board, 349A.9
 - board of county commissioners is ex-officio
 - county welfare board, 349A.9
 - clerk and recorder ex-officio secretary
 - and clerk, 349A.9
 - county attorney ex-officio legal adviser, 349A.9
 - powers and duties, 349A.10
- fiscal agent, state treasurer as, 349A.79
- state administrator
 - bond, 349A.3
 - office created, 349A.1
 - qualifications, 349A.3
 - salary, 349A.3
- state board of public welfare, 349A.2
 - compensation and expenses, 349A.2
 - duties assumed
 - Montana old age pension commission,
 - 349A.2
 - Montana orthopedic commission, 349A.2
 - Montana relief commission, 349A.2
 - state board of charities, 349A.2
 - state bureau of child and animal
 - protection, 349A.2
 - expenses, fund payable from, 349A.2
 - funds, restrictions on use of, 349A.14

Public Welfare—Continued**Administration—continued**
members

- appointment, 349A.2
- oath and bond, 349A.2
- qualifications, 349A.2
- removal, 349A.2
- terms, 349A.2

officers, 349A.2

powers and duties, 349A.3

- contracts with United States, power to make, 349A.14

- property, power to hold and condemnation, 349A.13

state department of public welfare, 349A.1—349A.21

administration, division of, 349A.5

administrator, 349A.3

- functions, 349A.6

assistance

- approval of applications for, 349A.16
- revocation, 349A.17

assumption of duties of other state agencies, 349A.72

authority, activities and duties, 349A.7

bank accounts of, 349A.81

child protection functions to be administered by, 349A.71

creation of, 349A.1

crippled children, services for, to be administered by, 349A.71

grants in aid, 349A.8

legal services, 349A.4

personnel, appointment of, 349A.6

powers and duties, 349A.72

reports and records, 349A.20

securities of, 349A.81

Aid to blind

assistance

- amount of, 349A.59
- authority to change, 349A.63
- reconsideration of amount, 349A.63

application for, 349A.60

- contents, 349A.60

- investigation of, 349A.61

cancellation of aid, 349A.67

county share of participation, 349A.65

definition, 349A.56

eligibility for aid, 349A.58

expenses for treatment, 349A.64

granting of aid, 349A.62

guardians

- appointment of, 349A.68
- assistance paid to, 349A.68

inadequate income, 349A.58

ophthalmologists

- approval of applications, 349A.61

- examination by, 349A.61

- re-examination, 349A.63

- rehabilitation report, 349A.61

recovery of aid from recipient, 349A.67

Public Welfare—Continued**Aid to blind—continued**
residence

- change of, 349A.66
- in county, 349A.58
- requirements, 349A.58

rules and regulations, 349A.57

supervision of, department of public welfare charged with, 349A.57

supplementary services, 349A.64

traveling expenses for patient, 349A.64

Appropriations, 349A.79

Child protection, bureau of, 349A.69

Child welfare services, administration, 349A.71

Dependent children, 349A.47—349A.55

assistance

- amount of, 349A.52

- reconsideration of amount, 349A.54

application for, 349A.50

- investigation of, 349A.51

county share of participation, 349A.53

eligibility for, 349A.49

- county welfare board to determine, 349A.52

- removal to another county, 349A.55

granting of, 349A.52

definition of, 349A.47

federal aid, 349A.53

placement homes, 349A.72

supervision, state department of public welfare charged with, 349A.48

Funds, 349A.79

disbursement, 349A.81

- method of, 349A.81

federal, state treasurer to receive, 349A.79

imprest fund, 349A.81

- claims to state board of examiners, 349A.81

securities, 349A.81

transfer from specific accounts, 349A.82

- auditor to be notified, 349A.82

General relief, 349A.22—349A.34

administration, 349A.22

amount of relief, 349A.33

application for relief, 349A.31

board of county commissioners to assume obligations, 349A.28

cash relief, 349A.26

certification for relief, 349A.29

complaints and grievances, right of appeal, 349A.25

disbursing orders, 349A.26

eligibility

- aliens and transients, 349A.23

- investigation of, 349A.29

- requirements for, 349A.23

emergency budget, 349A.30

equal consideration required, 349A.24

funds

- grants from state to counties, 349A.30

- money received from United States

- government, 349A.79

medical aid and hospitalization, 349A.27

Public Welfare—Continued

- General relief—continued
 - pauper's oath, 349A.31
 - temporary assistance, 349A.32
- Old age assistance, 349A.35—349A.46h
 - administration, 349A.35
 - age requirement, 349A.36
 - amount, 349A.37
 - applications, 349A.38
 - contents, 349A.38
 - investigation of, 349A.40
 - certification of eligibles by county
 - commission, 349A.46c
 - change of residence, 349A.46
 - construction of act, 349A.46f
 - county supervision of, 349A.35
 - definition of, 349A.35
 - eligibility requirements, 349A.36
 - emergency act, 349A.46f
 - funeral expenses, 349A.41
 - grants, periodic review, 349A.44
 - guardian, appointment of, 349A.42
 - income
 - inadequate, 349A.36
 - increase of, 349A.43
 - other acts suspended, 349A.46g
 - payment from county poor fund, 349A.46a
 - public institution inmates, 349A.36
 - purpose of act, 349A.46f
 - records and accounts, 349A.46e
 - recovery from estate of person assisted, 349A.45
 - reimbursement to state by county, 349A.39
 - removal to another county, 349A.46
 - residence requirements, 349A.36
 - return of excess, 349A.43
 - transfer of property, 349A.36
 - warrants where county funds insufficient, 349A.46d
- Orthopedic commission, 349A.69

Public Welfare, Board of

See **State Board of Public Welfare**

Public Welfare, State Department

See **Child Welfare Services**

Public Works

See **High School Districts**, 1301.1, 1301.2

Public Works Emergency Relief

- Act of 1937
 - expiration of act in 1941, 3033.34
 - necessity for act, 3033.33
 - partial invalidity, effect of, 3033.32
- Bonds, 3033.29
 - authority for, 3033.29
 - election to authorize, 3033.29
 - ballots, clerk to prepare, 3033.29
 - notices, clerk to post, 3033.29
 - registration for, 3033.29
 - resolution calling election, contents, 3033.29
 - sale of, 3033.29

Public Works Emergency Relief—Continued

- Emergency, 3033.34
 - declaration of, 3033.25
 - when over, loans cease, 3033.28
- Governing bonds, powers, 3033.27
- Loans to cease when emergency over, 3033.28
- Prior proceedings, validation, 3033.30
 - general laws applicable to, 3033.31
- Projects
 - authorized, 3033.26
 - requiring taxation
 - election to authorize, 3033.29
 - ballots, clerk to prepare, 3033.29
 - notices of, clerk to post, 3033.29
 - registration for, 3033.29
 - resolution calling, 3033.29
- Public policy, 3033.25
 - state subdivisions to undertake, 3033.26
 - time limit, 3033.26
- Public works, preference given to soldiers and sailors, 5653

Public Works Relief

See **Bonds**

- Pupils, transportation of, bus drivers, 1186.3
- Purchase of books, law library, 1556

Q

- Quantity of lands, mining leases, 1805.51-5
- Qualification and exemption of jurors, 8890—8895
- Qualification of electors, trustees, 1002
- Qualifications to do business, foreign corporations, 6651

Quieting Title

See **Actions**

Complaints

- Complaint, 9479.1
- Common lessee, suit against, 9479.1
- Decree, 9479.1
- Oil and gas leases, 9479.1
- Parties unknown, 9488.1
- Personal property, 9479.1—9488.1
- Remedy accumulative, 9479.2
- Service by publication
 - affidavit for, 9488.1
 - order for, 9488.1
- Summons, direction of, 9488.1
- Tax deed properties, 2215.2

- Quorum at meetings, rural electric associations, 6396.8

R**Radio Broadcasting, Defamation, 5694.1—5694.3**

- Construction of act, 5694.3
- Defamation, 5694.1
 - cooperating stations, non-liability of, 5694.3
 - station preparing address liable, 5694.3
 - operator, non-liability of, 5694.1
 - person broadcasting liable for, 5694.3
- Operator's right to demand copy of address, 5694.2

Railroads**See Assessment of****County Assessor**

- Beer, importation of, 2815.25b
- Commissioners, bond of, 464
- General regulation of business of,
 - repeals, 6600, 6601
- Easement on state land, 1805.62
- Shops, assessment of, 2132
- Stations, assessment of, 2132
- Rural improvements, assessment of costs, 4585
- Superintendents, exempt from jury duty, 8893

Rails, assessment of, 2132

Randolph-Shepard act, 1473.7

Range, definition of, 7364.29-2

Reading, course of study, 1054

Real Estate

- Conveyance by executor or administrator,
 - procedure, 10269
 - petition for, 10269
- Curative deeds, 10279.9
- Definition of, 1996
- Redemption from tax sales, 2210
- Sale of, motor vehicle act, 1754.15
- Quieting title, 9479.1
 - unknown parties, 9488.1
- Subordination agreements, mortgages, 8261.1
- Tax sales, redemption from, 2210

Real Property**See Assessment of**

Rear view mirror, driving without, 1741.7

Receiver, transfer of title to motor vehicle
by, 1758.2

Reckless Driving, 1741.7, 1754.11—1754.26

Evidence of, 1742.5

Recognized agency, definition of, 1840.3

Reconsideration of amount of assistance,
dependent children, 349A.54

Recording of instruments, 6935

Recording of transfers, 6893

Record of assessment and apportionment, state
board of equalization to keep, 2146

Records and accounts, old age assistance, 349A.46e

Records of employers, teachers' retirement
system, 1132.9

Records of retirement board, 1132.3

Recount of Votes**See Application for**

Recount of votes, 828.1

Recovery from estate, old age relief, 349A.45

Recovery of aid from recipient, aid to blind, 349A.67

Recreational sales, state park commission to
control, 1871.4

Recreational resources of state, park commission
to preserve, 1871.4

Redemption

From tax sales, 2182—2235

How invoked, 9444.3

Of goods sold under execution, 9443

Of mortgages, 9444.1

Of property

county commissioners, powers of, 2233.6

extension of time, 2233.6

tax sales, 2233.3

waiver of penalties, 2233.6

Period of

extended, 9444.2

suspension, 9444.5

School bonds, 1224.4

Re-examination of beneficiaries, retirement
system, teachers', 1132.6

Referees, appointment of, water right suits, 7135.3

Referendum**See Ballots****Initiative and Referendum**

On petition to organize soil conservation
districts, 3649.22

Vote

how canvassed, 2155c

majority required, 2155c

proclamation, 2155c

Refunding Bonds**See Cities and Towns**

Refunds of contributions under unemployment
compensation law, 3033.14

Refusal of medical examination, retirement
system, teachers', 1132.6

Regional forester, recommend member to
forestry board, 1840.1

Registrar of state land office, bond of, 464

Registration Certificates**See Barbers and Barber Shops****Cosmetology and Hairdressing****Registry Cards****See Cancellation of**

Regular interest, definition of, retirement system,
teachers', 1132.1

Regulation of Commercial Fertilizers

Analysis of, 4208.6

expenses, 4208.9

how paid, 4208.9

report of, 4208.9

publication of, 4208.10

to commissioner of agriculture, 4208.10

License fee surplus, 4208.10

disposition of, 4208.10

Mixed fertilizer container, statement require
on, 4208.2

Samples, how procured, 4208.7

Tests

details of, 4208.6

when to make, 4208.6

Regulation of Public Utilities, Public Service Commission

- Rates or charges fixed by commission
 - action to set aside, 3906
 - answer of commission, 3906
 - appeal to supreme court, 3906
 - burden of proof, 3906
 - commission may modify its order, when, 3906
 - evidence, 3906
 - injunction may issue, 3906
 - effect of, 3906
 - judgment, 3906
 - precedence over other actions, 3906
 - procedure, 3906

Regulation of Title Abstractors

- Abstract books, not required, when, 4139.12
- Certificate
 - holder of valid, 4139.12
 - fee, 4139.12
- Indices, not required, when, 4139.12

Rehabilitation of Blind

See **Commission for the Blind**

- Rehabilitation report, aid to blind, 349A.61
- Rehabilitation project, rural, 349B.1—349B.15

Rehabilitation Projects

See **Rural Rehabilitation Projects**

- Reimbursement to state by county welfare department, 349A.39

Release of oil, gas and mineral leases, 6893

Relief

See **General Relief**

Public Works Emergency Relief

- Amount, public welfare, 349A.33
- county to determine, 349A.40
- Emergency relief employment, 335.17-1—335.17-7
- Fund, appropriation to, 2343.3
- Public welfare act, 349A.74
- Public works emergency relief act, 3033.25—3033.34
- Warrants, 335.17-2

Relief Commission

See **Montana Relief Commission**

Relief Employment

See **County Commissioners**
Emergency Relief Employment

Relief Warrants

See **County Commissioners**

Religious

- Corporations, incorporation of, 6453
- Organizations
 - corporation license tax exemptions, 2296
 - exempt from gambling act, 11159.2

Removal of

- Excessive loads, motor vehicles, 751.5
- Officers otherwise than by impeachment, 11688
 - accusation
 - filed by county attorney, 11688
 - presented by grand jury, 11688
- Removal to another county, old age assistance recipient, 349A.46
- Rendering aid, accidents, 1754.31
- Renewal of store license, 2428.4
- Renovated butter, definition of, 2620.4
- Replevin, to recover seized narcotic drugs, forbidden, 3202.28

Reply

- Time to plead, 9192
- To defendant's answer, 9127

Reports

See **Accidents**

- Accidents, 1754.34
- Milk dealers, 2640.16
- State board of education, 877.4
- State highway commission, 1871.9
- Supreme court decisions, 384

Report to Equalization Board

See **County Assessor**

- Repossession, transfer of title to motor vehicle, 1758.2
- Representatives, ballot, arrangement on, 681.1
- Reservations, state monuments, 1575.4
- Reserve mineral rights, lease of, 1805.51-2
- Reservoir, easement on state land, 1805.62

Residence

See **Change of**

- Change of, aid to blind, 349A.66
- Requirements, aid to blind, 349A.58
 - old age assistance, 349A.36
- Restaurants, hours of labor, arrangement of, 3083.6
- Restoration of license, motor vehicles, 1754.13
- Resale of merchandise, fair trade act, 7590.2
- Restraint of trade, motor vehicles financing agreements, 10915.20

Retailers

- Definition of, fair trade act, 7590.1
- Montana beer act, definition of, 2815.11

Retail liquor licenses, 2815.166

Retirement Board

See **Teachers' Retirement System**

Revenue Bonds

See **Municipal Revenue Bond Act**

Revenue Bonds Refinancing

See **Municipal Revenue Bond Financing**

Revocation of

- Assistance, 349A.44
- Licenses, itinerant merchants, 2429.33

Road bed of railroads, assessment of, 2132

Road Districts

See **Special Road Districts**

Roads

Bonds may issue to acquire rights of way
and construct, 4630.1

State parks, 1871.7

Roadway of railroads, assessment of, 2132

Rolling stock, assessment of, 2132

Royalties, mining leases, 1805.51-4

Royalty interests, taxation and payment, 2091.1

Rubber tires, solid, loading on, 1751.4

Ruins, permits to examine, 1575.5

Rules and regulations, motor vehicle act, 1754.25

Rural Electric Associations

See **Board of Trustees**

Cooperatives

Deeds and mortgages, execution of, 6396.21

Excise tax, exemption from, 6396.28

Fees, 6396.27

Foreign corporations extending lines into
state, 6396.26

License fees, 6396.28

Members not liable for debts, 6396.22

Mortgages, 6396.21

Notice, waiver of, 6396.24

Process, secretary of state to accept
service, 6396.26

Property

disposition of, 6396.21

lease of, 6396.21

sale, 6396.21

Public service, commission, not under, 6396.29

Rural Electric Corporations

See **Cooperatives**

Rural Electric Cooperative Act, 6396.1—6396.31

Articles of

consolidation, 6396.13

incorporation, amendment of, 6396.12

Consolidation of companies, 6396.13

Construction of, 6396.31

Conversion of existing corporations, 6396.16
members to vote on, 6396.16

Cooperative defined, 6396.2

Corporations

articles of incorporation, 6396.6

amendment of, 6396.12

filing of articles, 6396.19

board of trustees

number, 6396.9

qualifications, 6396.9

removal of members, 6396.9

salaries, 6396.9

terms, 6396.9

quorum, trustees' meetings, 6396.9

by-laws, 6396.7

Rural Electric Cooperative Act—Continued

Corporations—continued

consolidation of companies, 6396.13

effect of, 6396.15

conversion of existing corporations, 6396.16

directors to approve conversion, 6396.16

trustees to approve conversion, 6396.16

dissolution, 6396.18

articles of, 6396.18

certificate of election to dissolve, 6396.18

directors as notaries, 6396.25

employees, 6396.11

fee, 6396.27

foreign corporations extending lines into
state, 6396.26

incorporators, 6396.5

liabilities of corporation, 6396.15

license fee, 6396.28

members, 6396.8

debts, not liable for, 6396.22

education of, 6396.20

initiative by, 6396.17

meetings

annual, 6396.8

notice of, 6396.8

quorum, 6396.8

special, 6396.8

voting, 6396.8

merger of, 6396.14

effect of, 6396.15

mortgages, recordation of, 6396.23

name of, 6396.4

notices, waiver of, 6396.24

officers, 6396.11

organization under, 6396.2

powers, 6396.3

Principal place of business, change of, 6396.12

property, disposition of, 6396.21

public service commission, exemption from
jurisdiction of, 6396.29

trustees, duties upon dissolution, 6396.18

winding up affairs, 6396.18

Definitions

member, 6396.30

person, 6396.30

rural area, 6396.30

surplus revenues, refund to members, 6396.20

taxation, classification for, 1999

voting districts, 6396.10

Purpose of act, 6396.2

Short title, 6396.1

Rural electrification projects, construction
of, 2707.1

Rural Improvement Districts

Costs

apportionment of, 4585

payment by railroads, 4585

Property, assessment, 4585

Rural Rehabilitation Corporation
See **Montana Rural Rehabilitation Corporation**

Rural Rehabilitation Projects
See **Board of County Commissioners**
County Clerk

Agreements

- absence of, 349B.15
- duty of subdivision to furnish services to project, 349B.15
- by political subdivisions with United States, 349B.13
- contents, 349B.9
- copies filed with county clerk and treasurer, 349B.10
- counties may make with United States, 349B.7
- names of counties, 349B.9
- political subdivision
 - agreements with United States, 349B.13
 - state may make with United States, 349B.2

Definitions, 349B.1, 349B.6

Government project fund, 349B.11

- apportionment, 349B.11
- deposit of funds, 349B.14
- itemized statement
 - county treasurer to prepare in duplicate, 349B.12
 - filing, 349B.12
- payments by United States, 349B.2
- payments in lieu of taxes, 349B.3
- basis for determination, 349B.8
- disposition, 349B.5
- request for fund, county commissions, 349B.7
- warrants for payments to political
 - drawn on county, 349B.12
 - endorsement, 349B.12
 - effect of, as ratification of agreement, 349B.12

Rural Rehabilitation Projects Agreements
See **Agreements**

Rural School Districts

- Budget, 1044
- Supervisor, 933
- Taxes, 1044
- Trustees, powers and duties of, 1044

S

Safe Deposit Boxes

See **Banks and Banking**

Sailors

See **Employment of Soldiers and Sailors**

Salaries, Fees, Expenses, and Mileage

- Assistant law librarian, 1569
- acting as justice of the peace, 4922
- Coroner
 - fees, 4922
 - salary, when, 4922

Salaries, Fees, Expenses, and Mileage—Continued

Deputy

- assessors, 4880
- auditor, 4880
- county attorney, 4880
- treasurers, 4880
- Marshal of the supreme court, 368
- Salary advances, 442.1
- Sheriff, 4916

Sale of

Dairy products, regulation of, 2620.4—2634.15
Liquor

- cash basis, 2815.177
- posted price, 2815.177
- election days, 2815.175
- habitual drunkards, 2815.174
- holidays, 2815.175
- hours of, 2815.175
- Indians, 2815.174
- interdicted persons, 2815.174
- intoxicated persons, 2815.174
- less than posted price, 2815.182
- minors, 2815.174
- not purchased from liquor stores, 2815.180
- restrictions, 2815.174
- minors, 2815.209
- without license, 2815.181

Personal property

- estates, 10204
- for taxes, 2239, 2252.5

Property, rural electric associations, 6396.21

School bonds, 1224.16

State lands, 1805.65-1—1805.89a

certificate

- cancellation of, 1805.88
- cancelled, 1805.87b
 - reinstatement, 1805.87b, 1805.89a
- conflicting laws, stay of, 1805.87e
- construction of act, 1805.88d
- default in payment, 1805.88
 - notice to owner, 1805.88a
 - removal of structures, 1805.88
 - revision to state, 1805.88
- delinquent certificate, 1805.87c
- delinquent installments, 1805.87a
- discretion of board of county
 - commissioners, 1805.88c
- installments, 1805.79
- penalties waived, 1805.87a
- purchaser in default, 1805.88b
 - certificate converted into amortization contract, 1805.88b
- saving clause, 1805.88e
- terms of payment, 1805.79
- under mining lease, 1805.51-9

Tax deed lands, 2182—2235

Unredeemed property by county commissioners

- apportionment of proceeds, 2235
- county treasurer, duties of, 2235
- deed, issuance of, 2235

Sale of—Continued

- Unredeemed property by county commissioners—continued
- disposition of proceeds, 2235
- exchange for bonds, 2235
- notice, 2235
 - publication, 2235
- proceeds of sale, 2235
 - proration of proceeds, 2235
- terms of sale, 2235
- validation of sale, 2235

Sale of Liquor

See **Liquor, Sale of**

Sampling and assaying ore, mailing statement to lessees, 3444.1

Sanitarium

See **Tuberculosis Sanitarium**

Sanitary Board

See **Livestock Sanitary Board**

Sanitation

See **Barbers and Barber Shops**

Sawdust Piles

- Burning of, 1840.19
- Restrictions, 1840.19

Saw mills, restrictions on, 1840.19

Scenic beauties of state, state park commission to preserve, 1871.4

School

- Attendance out of state, 1010A
- Bonds, 1224.3—1224.17
- Sale of, 1224.16
- Bus drivers, qualifications of, 1186.3
- Contracts, printed forms, etc., how supplied, 4482.17
- Correspondence, 930.5
- Districts, relief warrants, issuance by, 335.17.2
- Equalization fund, 1200.4
- For the deaf and blind, 1473.1—1473.4
- of Mines, 884
- Sale of liquors near, 2815.176
- Teachers, exempt from jury duty, 8893
- Trustees, 1002—1015(24)
 - abandonment of land, 1008
 - adult education, use of rooms, 1015(23)
 - apportionments
 - transfer of, 1013
 - attendance of elementary school out of state, 1010A
 - challenges and oath of voters, 1003
 - school property, disposition of, 1015(24)
 - duties and powers, 1015
 - electors, qualification of, 1002
 - false swearing, 1003
 - oath of voters, 1003
 - owner's notice of intention, 1008

School—Continued**Trustees—continued**

- powers and duties, 1015
 - acquisition of properties, 1015
 - annual report, 1015
 - furnishing books, 1015
 - indigent children, providing for, 1015
 - property, 1008
 - repossession of land, 1008
 - pupils, suspending and expelling, 1015
 - rules, prescribing and enforcing, 1015
 - school furniture, providing, 1015
 - school houses, repairing and insuring, 1015
 - teachers, employ and discharge, 1015
 - tuition, determining rate of, 1015
- Zone signs, failure to observe, 1741.7

School Code

See **High School Code**

School Districts

See **Abandonment of Counties**
Rural School Districts

School District Budget

See **Board of Trustees**

School Out of District

See **Attendance**

School Out of State

See **Attendance**

Schools

See **Bonds**

Cosmetology and Hairdressing

- County superintendent, 975
- Retirement system for public school teachers, 1132.1—1132.19
- Uniform system of public schools, 1200.4
 - equalization fund, 1200.4
 - state general fund created, 1200.4

Science Commission of Montana, 1575.3—1575.8

- Archaeological sites, 1575.5
 - disposition of specimens, 1575.5
 - excavation of, permits for, 1575.5
 - qualifications of applicants, 1575.5
- Collections of scientific objects, 1575.6
 - depositories of, designated, 1575.6
- Creation of, 1575.3
- Enforcement of act, 1575.8
 - duty of county attorneys, 1575.8
- Historic material, destruction of, 1575.8
 - injury to, 1575.8
 - penalty, 1575.8
- Historical structures, 1575.4
- Personnel, 1575.3
- Rules and regulations, 1575.3
- Scientific material, 1575.7
 - export of, 1575.7
- State monuments, 1575.4

Schools and Colleges

See **Barbers and Barber Shops**

School Superintendents

See **County Superintendents of Schools**

Scientific organizations, corporation license

tax exemptions, 2296

Scientific societies, incorporation of, 6453

Seach warrant, under uniform drug act, 3202.25

Sealer of Weights and Measures

See **Weights and Measures, Standard—State Sealer**

Second hand goods, sale of, 7590.5

Secretary and chief clerk livestock commission,
bond of, 464

Secretary of

Agriculture of the United States, milk control
board, cooperation with, 2640.21

Milk control board, 2640.4

Railroad commission, bond of, 464

State

articles of dissolution to be filed with, 6396.18

assembly journals, duties of, distribution, 135

attachment, service of summons upon, 9262.1

duty upon being served, 9262.2

bond of, 464

copyrights, filing with, 6815.2

foreign corporations to file with, 6651

non-resident motorists

fee taxed as costs, 1760.15

records, 1760.16

public reports, receipt of, 521

rural rehabilitation projects, filing of

agreements, 349B.4

service of process on, 1760.12

acceptance of service, protection of

copyrights, 6815.5

effect of, 1760.13

how made, 1760.14

session laws, duties of secretary

distribution, 135

indexing, 142

publication, 142

soil conservation act, duties under, 3649.22

transmissal of articles to county clerks, 6396.19

Rural electric associations, 6396.11

State board of food distributors, bond of, 2599.13

State board of health

bond of, 464

ex-officio member state temperance

commission, 2815.205

State park commission, 1871.3

State temperance commission, salary of, 2815.207

Secretary of State

See **Secretary of**

Seeds

See **Mustard Seed**

Seeds, agricultural, 3594

Seizure and sale of personal property for taxes, 2239

Selection, classification, appraisal and exchange
of lands, 1805.19a

Semi-precious stones, definition of, 1805.51-1

Senate Officers and Employees

See **Legislative Assembly**

Sentence

See **Criminal Law**

Services

Child welfare, public welfare act, 349A.74

Definition of, rural rehabilitation, 349B.1

For crippled children

definition of, 349A.70

organization and administration of, 349A.71

public welfare act, 349A.74

Session Laws

See **Secretary of State**

Sheriffs

Bond, 466

Expenses, fees, and mileage, 4916

Historic materials, preventing destruction of, 1575.8

Liquor, to seize unlawfully possessed, 2815.184

Motor vehicle, transfer of title by, 1758.2

Serving of citations, milk control board, 2640.5

State temperance commission, cooperation

with, 2815.210

Sidney pumping project, 349.29-1

Signs

Destruction of, 1840.20

Highways

failure to observe, 1741.7

restricting use of highways, 1751.7

Sinking Funds Investment

See **Cities**

Cities and Towns

Counties

County Finances, Bonds and Warrants

Size and color of ballots, 681

Skimmed milk, definition of, 2620.4

Smelters

Mailing statements to lessees, 3444.1

Payment for consignments, violations,
penalty, 3446

Smoking, restriction on, in forest areas, 1840.17

Social corporations, incorporation of, 6453

Social Security

See **Public Welfare**

Soil Conservation

See **Attorney General**

Soil Conservation Districts**Appropriations**

- budget act to be applied, 3649.32
- requests for, 3649.32
 - information to be given in request, 3649.32

Board of adjustment, 3649.28

- appointment, 3649.28
- compensation, 3649.28
- district court may review decisions of, 3649.28
- duties, 3649.28
- established by supervisors, 3649.28
- expenses, 3649.28
- hears petitions to vary from regulations, 3649.28
- may grant permission to vary from
 - regulations, 3649.28
 - review in district court, 3649.28
- membership, 3649.28
- organization, 3649.28
- vacancies, 3649.28

Conservation committee, 3649.21

- additional powers and duties, 3649.21
- cooperation of state agencies and
 - institutions, 3649.21
- created, 3649.21
- duty of, on referendum, 3649.22
- employees, 3649.21
- legal services, 3649.21
- offices, 3649.21
- personnel, 3649.21
- powers and duties, 3649.21
- records, 3649.21

Declaration of policy, 3649.19**Definitions, 3649.20****Districts, 3649.22**

- application to secretary of state, 3649.22
 - contents, 3649.22
- certificate of organization issued by
 - secretary of state, 3649.22
 - certified copy admissible in evidence, 3649.22
 - judicial effect of, 3649.22
- consolidation of petitions for, 3649.22
- cooperation between, 3649.29
- creation of, 3649.22
- discontinuance, 3649.31
 - certificate of dissolution, 3649.31
 - contracts, unexecuted remain in force, 3649.31
 - petition for, filed with soil conservation
 - committee, 3649.31
 - procedure, 3649.31
 - property, disposition of, 3649.31
 - referendum on, 3649.31
- funds allocated to, 3649.32
 - according to acreage, 3649.32
- governmental agency, 3649.22
- inclusion of additional territory, 3649.22
 - procedure, 3649.22
- name, checked by secretary of state, 3649.22
 - conflict in, procedure, 3649.22

Soil Conservation Districts—Continued**Districts—continued**

- organization
 - petition for, 3649.22
 - consolidation of two or more, 3649.22
 - contents, 3649.22
 - denial of, 3649.22
 - subsequent petitions, 3649.22
 - hearing, 3649.22
 - notice of hearing on, 3649.22
 - referendum on, 3649.22
 - ballots, form of, 3649.22
 - duty of committee, 3649.22
 - notice of, 3649.22
 - vote required to carry, 3649.22
 - subsequent petitions, 3649.22
 - petitioners for organization, 3649.22
 - organization
 - procedure, 3649.22
 - powers of, 3649.25
 - demonstrational projects, conducting, 3649.25
 - real or personal property, acquirement by
 - purchase or otherwise, 3649.25
 - surveys and investigations, 3649.25
 - practicability of, 3649.22
 - matters to be considered in determination
 - of, 3649.22
 - regulations, proceedings in district court for
 - non-observance of, 3649.27
 - state agencies to cooperate with, 3649.30
- Evidence, certified copy of certificate of organization admissible in, 3649.22

Funds

- allocated by committee to districts, 3649.32
 - disposition of, 3649.32
 - requests by committee for, 3649.32
 - budget act to be applied, 3649.32
 - information to be given in request, 3649.32
- Inconsistency with other acts, 3649.34
- Legislative determinations, 3649.19
- Partial invalidity of act, 3649.33
- Regulations for use of land
 - proposed ordinances, 3649.26
 - submitted to voters for approval, 3649.26
 - vote necessary for approval, 3649.26
 - non-observance, proceedings in court for, 3649.27
 - variance from, 3649.28
 - petition by land owner for, 3649.28
 - board of adjustment may grant, 3649.28
 - hearing and notice of, 3649.28

Repeal, 3649.35**Saving clause of act, 3649.33****Short title of act, 3649.18****Supervisors**

- attorney general to render legal services
 - for, 3649.24
- election and appointment of, 3649.22
 - elections for supervisors, 3649.24
 - who eligible to vote, 3649.23
- compensation, 3649.24

Soil Conservation Districts—Continued**Supervisors—continued**

- employees, 3649.24
- bonds, 3649.24
- expenses, 3649.24
- land use regulations, 3649.26
- legal services, 3649.24
 - may call on attorney general or employ counsel, 3649.24
- nominating petitions, 3649.23
- ordinances, proposed, 3649.26
 - submitted to voters for approval, 3649.26
 - vote necessary for approval, 3649.26
- powers and duties, 3649.24
 - delegation of, 3649.24
- quorum, 3649.24
- records, 3649.24
- regulations
 - may adopt, 3649.26
 - must be uniform, 3649.26
 - non-observance, 3649.27
 - performance of work under, 3649.27
 - what may include, 3649.26
- removal by state soil conservation committee, 3649.24
- terms, 3649.24
- vacancies, 3649.24

Soldiers

See **Employment of Soldiers and Sailors**

Soldiers, Sailors, and Marines, Burial

See **Care of County Poor**

Soldiers' Memorial Fund

See **Veterans' Memorial Fund Commission**

Sparks, escape of, forest fire season, 1840.18

Special Districts

See **Abandonment of Counties**

Special drain commissioners, bonds of, 466

Special Improvement Districts

See **Municipal Corporations**

- Assessment taxes, 5245
 - interest on, 5245
 - collection, 5245
 - maximum rate, 5245

Bonds

- form of, 5249
- interest rate, 5249
- maturity date, maximum, 5249
- registration, 5249

Protects against proposed work, 5229

- hearing of, 5229
- time within which filed, 5229
- overruling, when council may, 5229
- withdrawal, 5229

Warrants, form of, 5249

Special meeting, rural electric association, 6396.8

Special Road Districts, 1652—1675.2

- Abolished, 1675.1
- Property and liabilities, 1675.2
- Transfer of property to county, 1675.2

Speed and Traffic Regulations of Motor Vehicles

See **Automobiles**

Motor Vehicles

- Speed, 1741.7
- Speed limit zones, 1742.3
- Speed regulations, motor vehicles, 1742.1
- Stalled vehicles without flares or flags, 1741.7
- State administrator, 349A.6
- State agencies, cooperation with park commission, 1871.8
- State aid to the blind, 1473.15
- State and national offices on ballots, 681
- State appropriation for public welfare, source of, 349A.80
- State auditor, bond of, 464
- State bank examiner, to examine books of the blind, 1473.13

State Board of Charities and Reform

- Act repealed, 325—335
- Duties assumed by state board of public welfare, 349A.2

State Board of Education, 836a, 836b

- Degrees and honors, 836a
 - award approved by board, 836a
 - educational institutions may award, 836a
 - violations of act, 836b
- Forestry school, 877.1
- Montana school for the deaf and blind, 1470
- Montana state training school, control of, 1473.4
- Powers of, journalism building, 877.7
- Reports, 877.4
- State commission for the blind, approval of rules, 1473.8
- State correspondence school, 930.6
- State forest experimental station, 877.1

State Board of Equalization

See **Appeals**

- Appeals from county boards, 2122.9
 - hearing, 2122.9
 - notice of appeal, 2122.9
 - contents, 2122.9
 - procedure for appeal, 2122.9
 - who may appeal, 2122.9
- Assessment of
 - property, apportionment, 2143
 - railroads, 2132—2137
 - hearing, 2132
 - how made, 2132
 - notice, 2132
 - record of assessments and apportionments to be kept, 2136
 - statement transmitted to county assessor, 2133
 - duties of assessor, 2133

State Board of Equalization—Continued

- Assessment of—continued
 - telegraph, telephone, electric power, lines, etc., 2138—2146
 - all properties assessed, 2143
 - apportionment to counties, 2143
 - assessor's statement transmitted to board, 2139
 - contents, 2139
 - hearing before the board, 2141
 - notice of, 2141
 - scope, 2142
 - officers' statement to board, 2138
 - contents, 2138
 - record of assessment and apportionment must be kept, 2146
 - report of county assessor to board, 2139
 - statement of apportionment transmitted to county assessor, 2144
 - duty of assessor, 2144
- Beer act, taken from board, administration of, 2815.12
- Gasoline tax refund
 - investigation of, 2396.4
 - refund permits, 2396.4
- information required, 2138
- Movie theatres, license of, 2439.1
- Store license, issuance, 2428.1
- Telephone license tax
 - duties concerning, 2355.16
 - rules concerning, 2355.12

State Board of Forestry, 1840.1—1842

- Board of county commissioners, cooperation with, 1840.22
- Board of land commissioners, assistance to, 1840.7
- Camp fires, 1840.15
 - failure to extinguish, penalty, 1840.15
- Cigarettes, throwing away burning, penalty, 1840.17
- Classified lands, duty of owner, 1840.9
- Compensation, 1840.1
- Creation of, 1840.1
 - personnel, 1840.1
- Definitions, 1840.3
- Engines, wood or coal burning, 1840.18
 - operation without spark arresters, forbidden, 1840.18
- Federal agencies, cooperation with, 1840.5
- Fines collected
 - costs, 1840.21
 - disposition of, 1840.21
- fire districts, creation of, 1840.5
- Fire wardens, ex-officio, 1840.25
- Forest areas, classification of, 1840.5
- Foresters' cooperative work fund, 1840.23
 - disbursement, 1840.24
 - moneys to be placed in, 1840.23
- Forest fires, 1840.14
 - setting, 1840.14
 - permit, 1840.14
 - failure to comply with act, penalty, 1840.16

State Board of Forestry—Continued

- Land owner
 - compliance with act
 - responsibility, 1840.4
 - what constitutes, 1840.10
- Meetings, 1840.1
- Moneys other than cooperative fund for expenditure, 1840.23
- Personnel, 1840.1
- Powers of, 1840.5
- Protection of forests
 - cost of, 1840.11
 - certified to county clerk, 1840.11
 - collected as taxes, 1840.11
 - lien upon the land, 1840.13
 - foreclosure of lien, 1840.13
 - payment under protest, 1840.12
 - secretary to compute, 1840.11
- Protection of lands, 1840.5
- Purposes of act, 1840.28
- Rules, enforcement of, 1840.5
- Saving clause, 1840.29
- Sawdust piles, regulations concerning, 1840.19
- Sawmills, restrictions on, 1840.19
- Secretary, duties, 1840.11
- Signs, warnings, notices, destruction of, penalty, 1840.20
- State forester, 1840.26
 - office, 1840.26
 - powers and duties, 1840.26
- Records, 1840.26
- State-owned lands, assessments on, 1840.8
- Technical advice, 1840.6
- Violations of the act, penalty, 1840.27

State Board of Health, 2484.1—2484.8

- Child welfare division, 2511—2514
- Industrial hygiene division
 - creation, 2484.1
 - personnel, 2484.1
 - powers, 2484.2
- Montana orthopedic commission, 2511—2514
- Secretary of, ex-officio member of state temperance commission, 2815.205

State Board of Land Commissioners

- Emergency relief employment warrants, authority to purchase, 335.17-5
- Exchange of lands, 1805.19a
- Forests, acquisition, 1842.4
- Lease of lands, examination before, 1805.51-11
- Lease of mining claims, 1805.51-2
- Public reports, to receive, 521
- State board of forestry, to assist, 1840.7
- State lands
 - easements on, 1805.61
 - sale of, discretion, 1805.88c
 - title, acceptance, 1805.19a
- State parks, powers over, 1842.8
- Stream beds, to determine title to, 1805.51-14

State Board of Public Welfare, 349A.2

Governor to appoint, 349A.2

Terms of members, 349A.2

State Board of Vocational Education, 1262.99a

Tuition fees, to fix, 1262.99f

State Bureau of child and animal protection, duties

assumed by state board of public welfare, 349A.2

State commission for the blind, books, keeping

of, 1473.13

State bureau of mines and geology, 884

State Bureau of Public WelfareSee **Public Welfare, 349A.1—349A.82**Assumes duties of Montana orthopedic
commission, 349A.72Enforcement of laws pertaining to
children, 349A.72

State college of agriculture at Bozeman, taxation

to provide for, 2155a

State Correspondence School, 930.5

Director, 930.6

Establishment, 930.5

Fees, appropriation, 930.7

Funds, 930.7

Purposes, 930.5

Registration fees, 930.5

Rules and regulations, 930.6

State board of education, functions, 930.6

State superintendent of public instruction
functions, 930.6

Students served, 930.5

State custodian of teachers' retirement fund, 1132.7

State department blind account, 349A.65

State Employment Service

Agreements, 3033.12

Duties, 3033.12

Director, 3033.12

Employment offices, 3033.12

Financing, 3033.12

Personnel, appointment of, 3033.12

State EngineerSee **Carey Land Act Board**

Action to adjudicate water rights, 7135.2

Carey land act, 1956.2

Duties in water adjudication proceedings, 7135.5

State Examiner, 214—219Access to books and accounts of public
officers, 214

refusal to permit, by officer, 214

procedure, 214

Assistants, deputies and clerks, salaries of, 219

Audit

accounts of public officers, 214

procedure if shortage discovered, 214

suspension of officer, 214

quo warranto against successor, 214

State Engineer—Continued

Audit—continued

state, county, city, town or school district
accounts, 214Cities, towns and school districts, examination of
accounts, 215

Duties of, 214, 215

Ousted officers

rights of, 214

School districts

examination of accounts, 215

board's request for examination, 215

employment of public accountant, 215
fee, 215

Shortages, report of, 214

Yearly audit, 215

State Examining BoardSee **Cosmetology and Hairdressing**State food distributors' associations, payments to
by board, 2599.14**State Forester**See **Forester, State**

Bond, 464

Fire warden, ex-officio, 1840.25

Office, 1840.26

Powers and duties, 1840.26

Records, 1840.26

state park commission, 1871.3

Secretary, forestry board, 1840.1

State forest experimental station, 877.1

State Forests

Development of, 1842.5

Establishment of, 877.1

Expenditures, 1842.5

Products, 1842.5

sale, 1842.5

Purposes of, 877.3

Revenues, 1842.6

Rules and regulations, 1842.5

State FundsSee **State Institutional Funds**

Grants thereof to counties, relief, 349A.30

State general fund

electrical energy tax appropriated to, 2343.1a

royalties from mining leases, applied

to, 1805.51-17

State Grass Conservation Commission

Advisory capacity of, 7364.29-17

Conservation districts

articles of incorporation, 7364.29-10

contents, 7364.29-10

certificate of approval, 7364.29-9

incorporation of, 7364.29-9

supervision, 7364.29-7

Cooperation with other agencies, 7364.29-7

State Grass Conservation Commission—Continued

- Decisions of
 - commission, appeals, 7364.29-8
 - secretary, appeals, 7364.29-8
- Employees, 7364.29-7
- Fees, 7364.29-29
- Fund, 7364.29-6
- Game and fish commissioner, aiding, 7364.29-30
- Grazing associations, 7364.29-7
- Land commission, advising, 7364.29-17
- Leasing lands, duty, 7364.29-16
- Members, 7364.29-3
 - appointment, 7364.29-3
 - compensation, 7364.29-5
 - expenses, 7364.29-5
 - meetings, 7364.29-4
 - quorum, 7364.29-4
 - terms, 7364.29-3
- Powers of, 7364.29-7
- Records, 7364.29-4
- Secretary
 - compensation, 7364.29-5
 - functions, 7364.29-5
- Wild life preservation, 7364.29-30

State Grazing Districts

- Animals trespassing, impounded, 7364.29-26
- Assets
 - when permittee to receive, 7364.29-24
 - surplus assets, 7364.29-24
- By-laws
 - amendment, 7364.29-15
 - approval by commission, 7364.29-15
- Compliance with act, 7364.29-18
- Directors, powers and duties, 7364.29-13
- Dissolution of district, 7364.29-25
 - distribution of assets, 7364.29-25
 - final report, 7364.29-25
 - procedure for dissolution, 7364.29-25
- Fees
 - against district, 7364.29-29
 - grazing, 7364.29-22
- Fences within districts, 7364.29-26
- Fund, state grass conservation, 7364.29-28
- Grazing preferences, 7364.29-20
 - alienation of land, 7364.29-22
 - appertenance to dependent commensurate property, 7364.29-22
 - applications for, 7364.29-21
 - definition of, 7364.29-2
 - new member receiving, 7364.29-24
 - non-use permits, 7364.29-22
 - permittee members, 7364.29-14
 - revocation of preference, 7364.29-22
 - temporary grazing permits, 7364.29-20
- Improvements
 - compensation for, 7364.29-23
 - range, 7364.29-23
- Incorporation, 7364.29-9

State Grazing Districts—Continued

- Land
 - disposition of, 7364.29-14
 - leasing, duty, 7364.29-16
 - not controlled by district, 7364.29-27
- Map of district, filing, 7364.29-11
- Membership, 7364.29-14
 - purchasers' membership, 7364.29-14
- Powers of, 7364.29-12
- Stock
 - crossing district with, 7364.29-26
 - permit to cross, 7364.29-26
 - damage caused by, 7364.29-27
 - grazing within district, 7364.29-26
 - trespassing stock, 7364.29-26
- State guarantee of teachers' retirement fund, 1182.16

State HighwaySee **Commissions****State Highway Commission**

- See **Highway Commission**, 1797.1—1800.2
- Emergency declaration, 1800.2
- Highway debenture bonds, resolution concerning, 2381.4d
- Highways to municipal airports, 1800.1
- Sale of lands
 - cash payment, 1797.1
 - deed, 1797.2
 - governor to sign, 1797.2
 - power to sell, 1797.1
 - procedure, 1797.1
- Standard highway requirements, 2396.3

State Highway DebenturesSee **Bonds****State Highway Treasury Anticipation Debentures**

- State highway debentures, 2381.4a—2396.4
- State highway department, construction of park roads, 1871.7
- State highway fund, state highway treasury anticipation debentures, 2381.4n

State Highways

- Construction moneys, 2396.3
 - allotment, 2396.3
 - determination of, 2396.3
- Use of, 1760.11

State Highway Treasury Anticipation Debentures

- Authorization, 2381.4h
 - amount authorized, 2381.4a
- Bids, 2381.4e
- Date, effective, of act, 2381.4L
- Date of debentures, 2381.4c
- Election, 2381.4n
- Emergency clause of act, 2381.4m
- Federal highway grants, matching of, 2381.4n
- Form of, 2381.4b
- Interest coupons, 2381.4b

State Highway Treasury Anticipation**Debentures—Continued**

- Issuance and sale, 2381.4d
- Maturity, 2381.4b
- Nature
 - negotiability, 2381.4b
 - terms of contract, 2381.4d
- Public funds, investment in, 2381.4g
- Public obligations, payment in, 2381.4h
- Purpose of act, 2381.4m
- Sale
 - advertisement, 2381.4e
 - award on bids, 2381.4e
 - proceeds
 - appropriation, 2381.4f
 - interest accrued and premiums, 2381.4f
 - disposition, 2381.4a
 - resolution of commission, 2381.4e
 - state may purchase, 2381.4g
- Saving clause of act, 2381.4k
- State treasurer, duties of concerning, 2381.4e
- Terms and conditions of debentures, 2381.4b
- Title of act, 2381.4j

State Insane Hospital Bonds

- Form, 1444d
- Interest and redemption fund, 1444g

- State institutional funds, investment, transfers,
 - Const. Art. XXI. § 6

State Institutions**See Board of Examiners**

- Emergency, expenditures in excess of
 - appropriation, 269b
- Expenditures in excess of appropriation, 269a

State Insurance**See Commissions**

- Acts repealed, 173.2—173.20
- Premiums
 - collections and offsets when not paid, 173.21
 - disposition of proceeds, 173.22
 - unearned, refunds, 173.23
- Premiums and refunds, computation,
 - certification, 173.24
- State-owned property, premiums unpaid, adjustment of credits on reinsurance, 173.25

State Insurance Commission

- Establishment, personnel, meetings,
 - procedure, 173.1a
- Insurance on state property, approval of insurance
 - by commission, 173.1c
- Powers and duties, state-owned property, 173.1b

- State land board, to cooperate with state grass
 - conservation commission, 7364.29-1

State Lands**See Commissioner of**

- Abandoned beds of navigable streams, 1805.122
 - plat and field notes, 1805.124
 - sale or leasing, 1805.123
 - powers of state board, 1805.123
 - surveying, 1805.123
- Easements on, 1805.61
 - application for, 1805.61
 - contents, 1805.61
 - leased lands, easements over, 1805.63
 - purposes for which granted, 1805.62
 - viewing proposed easement, 1805.61
- Forestry lands, 1840.8
- Islands in navigable streams, sale or lease, 1805.123
- Leasing of
 - assignment, 1805.32
 - filed with and approved by
 - commissioner, 1805.32
 - liability, 1805.51-13
 - bonds to protect lessees, 1805.51-8
 - conditions, 1805.32
 - expiration dates, 1805.24
 - failure of title, 1805.51-12
 - length of lease, 1805.23
 - renewal of leases, 1805.21
 - rentals, increase of, 1805.23
 - sublease
 - cancellation of, when, 1805.32
 - lessee may lease, 1805.32
 - terms of lease, 1805.23
 - who may lease, 1805.23
- Mining leases, 1805.51-1, 5
 - application, 1805.51-6
- Prospecting permits and mining leases,
 - 1805.51-1—1805.51-8
 - applications for, 1805.51-6
 - fee, 1805.51-6
 - form of, 1805.51-6
 - notice of granting, to lessees and others
 - interested, 1805.51-16
 - assignment of leases or permits, 1805.51-13
 - fee, 1805.51-13
 - requirements, 1805.51-13
 - bond
 - to protect contractees, etc., 1805.51-8
 - to protect rights of state, 1805.51-7
 - definitions, 1805.51-1
 - duration of leases, 1805.51-2
 - duties of board of land commissioners, 1805.51-11
 - prospecting permits, 1805.51-1
 - lease to permittee, 1805.51-15
 - removal of minerals during prospecting
 - period, 1805.51-3
 - provisions of leases, 1805.51-3
 - quantity of land, 1805.51-5
 - repeal, 1805.51-18
 - royalties, 1805.51-4
 - disposition of, 1805.51-17
 - sale of lands, subject to leases, 1805.51-9

State Lands—Continued

Prospecting permits and mining leases—continued
state board of land commissioners may
lease, 1805.51-2

stream beds, determining title to, 1805.51-14

Sale of, 1805.65-1—1805.89a

bonds to protect prior purchasers, 1805.51-8
certificates

cancelled, 1805.87b

reinstatement, 1805.87b

delinquent, 1805.87c

conflicting laws, stay of, 1805.87e

installments, 1805.79

delinquent, 1805.87a

payment

default, 1805.88

terms, 1805.79

penalties waived, 1805.87a

purchaser in default, 1805.88b

report by state board of land

commissioners, 1805.61

State lands and investmentss, miscellaneous,
1805.122—1805.125

State Lands Lease

See **Application for**

State Land Sales

See **Sales of**

State Lands Sales, Amortization

See **Contracts**

State Library

Assistant law librarian, employment, 1569

Funds, 1556

Public reports, receiving, 521

State liquor administrator, term of office, 2815.65

State liquor control act, definitions, 2815.165

State Liquor Stores, 2815.69

Days when closed, 2815.75

Fixing of prices, 2815.69

Hours of business, 2815.69

Invoices, 2815.179

State, local and county boards of health,
2484.1—2484.8

State monuments, declarations of, 1575.4

State Officers

See **Bonds**

Official Reports of

State officers, bonds, 464

State old age pension commission, records and
accounts, 349A.46e

State-owned automobiles, 1757.1

State-owned property insurance, 173.1c

State-owned vehicles, 1757.1

State Park Commission

See **Chairman**

Chairman, 1871.3

Cooperation with

federal agencies, 1871.8

state ageencies, 1871.8

Creation, 1871.1

Duties, 1871.4

Employees, 1871.3

Expenses, 1871.2

Fees and charges, 1871.5

Fund, state park, 1871.5

Gifts, acceptance by, 1871.4

Members, 1871.2

appointment, 1871.2

compensation, 1871.2

meetings, quorum, 1871.3

qualifications, 1871.2

Officers, 1871.3

Organization, 1871.3

Powers and duties, 1871.4

Public camping grounds, control of, 1871.4

Purposes, 1871.1

Recreational areas, control of, 1871.4

Reports, 1871.9

Terms, 1871.2

State Parks

See **Board of County Commissioners**
Commissions

State Parks and Forests

Board of land commissioners

authority, 1842.4

power, 1842.8

Development of, 1842.5

Expenditures, 1842.5

Land

acquisition, 1842.4

lease, 1842.8

sale, 1842.8

Obligations, 1842.7

Products, sale, 1842.5

Properties, exchange of, 1842.8

Revenues, 1842.6

Roads connecting, 1871.5

Rules and regulations, 1842.5

State purchasing department, authority to
purchase, 287

State public school general fund, 1200.4—1200.4-2

State Sealer

See **Weights and Measures, Standard—State Sealer**

State senators, ballot, arrangement on, 681.1

States, foreign, motor vehicle offenses in, 1754.12

State Superintendent of Public Instruction

Member of science commission, 1575.3

Powers, junior colleges, 930.14

State supervisor for the blind, 1473.9

State Surplus Cash

- Distribution, Taylor grazing act, 191.2
- Investment, records, list filed by treasurer, 182.1

State Temperance**See Commissions****State Temperance Commission****See Attorney General**

- Administration of act, 2815.209
- Attorney general, cooperation with, 2815.210
- County attorneys, cooperation with, 2815.210
- Duty, 2815.209
- Establishment, 2815.205
- Fund
 - administration, 2815.212
 - appropriation for, 2815.212
 - creation, 2815.211
 - purposes, 2815.211
 - use, 2815.212
- Investigations by, 2815.210
- Minors, sale of liquor to, 2815.209
- Personnel, 2815.205
 - president, 2815.206
- Place of business, 2815.206
- Public policy, 2815.209
- Purposes of, 2815.208
- Salaries, 2815.207
 - secretary, 2815.207
- Sheriffs, cooperation with, 2815.210

State Treasurer**See Coal Mines License Tax****State Surplus Cash**

- Agent for public welfare funds, 349A.79
- Bond of, 464
 - under unemployment administration fund, 3033.13
 - under unemployment compensation law, 3033.9
- Capitol refunding bonds, registration of, 283.6
- Coal mines license tax, collection, 2323
- Duty under unemployment compensation law, 3033.9
- Excise tax, liquor deposit with, 2815.178
- Insane asylum bonds, to receive proceeds from, 1444f
- Movie theater license fees payable to, 2439.7
- Public school general fund, maintenance, 1200.4
- State highway treasury anticipation debenture bonds
 - purchase of, 2381.4g
 - sale of, 2381.4e
- State parks, revenue from, 1842.6
- Taxes illegally collected, refund, 2222
- Temperance commission fund, 2815.211

State Trust and Legacy Fund**See Public Funds**

- Application, appropriation, Const. Art. XXI. § 11
- Preserving identity, duty of state treasurer,
 - Const. Art. XXI. § 10

State University**See Montana State University**

- Taxation to provide for, 2155a

State veterinarian, bond of, 464**State Vocational School for Girls, 12543—12543.2**

- Escapes,
 - assisting, penalty, 12543.1
 - permitting, penalty, 12543
 - rescuing inmates, 12543
- Repeals, 12543.2

State Water Conservation Board, 349.29-1—349.38-1**Actions**

- costs, 7135.5
- engineer to bring, 7135.2
- Eminent domain, 7196.1
- Forestry board, member in, 1840.1
- Irrigation districts, financial aid to, 7263.19
- Irrigation works, construction by, 7196.1
- Interstate compacts, 7135.1
- Jurisdiction, power of board to act beyond, 349.5
- Lands
 - exchange of, 1805.19a
 - water conservation lands, 349.38-1
 - taxes
 - cancellation of unpaid, 349.38-1
 - exemption from taxation, 349.38-1

Powers, 349.5**Sidney pumping projects, public works, 349.39-1****Stored waters, petition for distribution, 7136****Yellowstone river project, 349.29-2****authorization, 349.29-2****diversion of waters, 349.29-2****Stationary gasoline engines, tax refund, 2396.4****Statutes****See Revision of the Codes, 5531.11—5531.13****Statutes of sister states, judicial notice of, 10532.1****Stock****See Building and Loan Associations****Stock brokers regulation of securities to which blue sky law not applicable, 4028****Stock Companies****See Joint Stock Companies****Stock Credits****See Building and Loan Associations****Stock Growers' Association****See Montana Stock Growers' Association****Stock Increase****See Corporations****Stock Lanes****See County Commissioners****County commissioners', 1651.4****Definition, 1651.2****Eminent domain, 1651.3**

Stock Lanes—Continued

- Establishment, 1651.4
- Laws applicable to, 1651.3
- Location, 1651.4
- Title of act, 1651.1
- Vacation of, 1651.4
- Width of, 1651.2

Stock Savings Bank Loans

See **Banks and Banking**, 6018.1

Stolen automobiles, highway patrolmen may arrest, 1741.9

Stopping or parking on main highways, 1741.7

Stop signs, failure to observe, 1741.7

Store, defined, 2428.10

Store Licenses

- Administration of act, 2428.12
- Application for, 2428
 - form, 2428.1
- Application of act, 2428.6, 2428.9
 - foreign merchants, 2428.9
 - persons subject to act, 2428.5
- Board of equalization, consideration by, 2428.3
- Businesses excluded, 2428.5
 - building materials, 2428.5
 - gasoline
 - distributing plants, 2428.5
 - filling stations, 2428.5
 - grain elevators, 2428.5
 - hardware, 2428.5
 - lumber yards, 2428.5
- Collections, disposition, 2428.12
- Display of, 2428.3
- Employees, 2428.12
- Expiration of, 2428.4
- Fees, 2428
 - Annual, 2428.5
 - amount, 2428.5
- Insurance by state board of equalization, 2428
- Renewal, 2428.4
- Saving clause of act, 2428.13
- Tax, 2428.1—2428.14
 - annual tax, 2428.8
 - individual units taxed separately, 2428.5
- Violations of act, penalties, 2428.11
- Wholesale stores, 2428.7

Stout, sale of, 2815.13

Stream beds, determining title to, 1805.51-14

Street, easement on state land, 1805.62

Striking fixtures on highway, accident, 1754.33

Striking unattended motor vehicle, 1754.32

Students, junior colleges, 930.18

Subdivisions

See **Political Subdivisions**

Subordination agreements, mortgages, 8261.1

Subpoenas

- Milk dealers, by mil control board, 2640.5
- Montana trade commission, 10915.12b
- Under unemployment compensation law, disobedience, 3033.11

Succession, 7090.1—7090.5

- Nonresident aliens, right of inheritance, 7090.2
- Person defined under act, 7090.1

Suits concerning protection of copyrights, 6815.7

Suits in forma pauperis, 9791

Summoning jurors for courts of record, 8903, 8904

Summons

- Highway patrolmen, 1741.10
- Justice courts, 9631
 - Alias summons, 9633
- Service of, 9111
- Unknown parties, 9488.1

Summons, Service

See **Children**

Cities

Corporations

Counties

Superannuation retirement, retirement system, teachers', 1132.6

Superintendent of

- High school, employment of, 1262.83
- Schools, county, 975
- Public instruction, 933
 - bond of, 464
 - deputy
 - appointment of, 933
 - salary of, 933
 - ex-officio member state temperance commission, 2815.205
 - junior colleges, approval of, 930.10
 - public reports, to be received, 521

Supervisors

See **Soil Conservation Districts**

- Definition of, uniform accident reporting act, 1754.28
- High school, 933
- Highway patrol, 1741.4
- Rural schools, 933

Supplementary motor vehicle code, 1754.11

Supplementary services, aid to blind, definition of, 349A.56

Supreme Court

See **Clerk of**

Court Attendant, Supreme Court

Marshal of Supreme Court

- Court attendant, 377
 - appointment, 377
 - duties, 377
 - salary, 377
 - term, 377

Supreme Court—Continued

- Fees, 372
 - disposition of, 372
 - to library fund, 1556
- Marshal, 366—368
 - appointment, 366
 - duties and salary, 367, 368
 - service of process, 367
- Reports, distribution of, 384
- Surety bonds, itinerant merchants, 2429.30
- Suspension of Licenses, 1754.12**
 - Death by operation of motor vehicle, 1754.12
 - Driving under the influence of intoxicating liquors, 1754.12

T

- Tabulation of accident reports, 1754.41

Tax**See Beer****Taxation**

- Assessment of
 - motor vehicles, 2002
 - property in general, 2001.1—2002
 - how made, 2002
 - whom assessed, 2002
 - when to be made, 2002
 - telegraph, etc. lines extending through county, 2138—2146
 - all properties must be assessed, 2143
 - apportionment of assessment to counties, 2143
 - assessor to transmit statement to board, 2139
 - contents, 2139
 - hearing before the board, 2141
 - facts pertaining to assessment, determination, 2142
 - notice of, 2141
 - officers to furnish statement to board, 2138
 - contents, 2138
 - record of assessment and apportionment, 2146
 - statement of apportionment, 2144
 - duty of assessor, 2144
- Assessor's duties and liabilities, 2001.1—2002
- Beer tax, failure to pay, 2815.25
- Classification of property for, 1999—2000.4
- County clerks' duties, 2159
- Deductions, national bank stock, 2000.4
- Definitions, 1996
- Distributors' license tax, 2381.4a—2396.4
- Gasoline dealers' tax, 2381.4a—2396.4
- Levy, 2147.1—2155c
 - for old age assistance, 349A.46a
 - for state purposes
 - for 1937, 2147.1
 - for 1938, 2137.2
 - for 1939, 2147.3
 - for 1940, 2147.4
- Liquor, excise tax on, 2815.178

Tax—Continued

- Forestry act, 1840.28
- Mines, 2090.1, 2091.1
 - net proceeds assessed by state board of equalization, 2091.1
 - royalty lists transmitted by county clerk, 2091.1
- Montana
 - agricultural school, 2155a
 - state normal school, 2155a
 - state normal college, 2155a
 - state school of mines, 2155a
- Motor vehicles, 1759
 - disposition of taxes, 1759.3
- Municipal purposes, 5221
 - funds, distribution of, 5194
 - limitation on amount, 5194
- National banks, real estate, 2000.4
- Park purposes, levy for, 5194
- Percentage basis and taxable value, 2001.1
- Personal property
 - lien on realty, 2153
 - preference, 2153
 - separate assessment on request of mortgagee of realty, 2153
 - tax on, 2153
 - collection, 2238—2252.7
- Poll tax
 - collection of, 5221
 - duties of clerk and treasurer, 5221
- Railroads, assessment of, 2132—2137
- Referendum
 - ballots, 2155b
 - form of, 2155b
 - how voted, 2155b
 - state educational, etc., purposes, 2155a
 - vote, 2155c
 - how canvassed, 2155c
 - majority required, 2155c
 - proclamation, 2155c
- Refunding bonds of municipalities, exempt from, 5288.10
- Refund of taxes, 2222
- State board of equalization, 2122.9
 - appeal from county board, 2122.9
 - hearing, 2122.9
 - notice of appeal, 2122.9
 - procedure, 2122.9
 - who may appeal, 2122.9
 - assessment of railroads, 2132—2137
 - duties of county assessor, 2133
 - how made, 2132
 - record of assessments and apportionments, 2136
 - notice of hearing, 2132
 - statement to county assessor, 2133
- State college of agriculture, 2155a
- State educational and other purposes, 2155a
 - referendum on act, 2155b
- State university at Missoula, 2155a
- Taxable value, 1996

Tax—Continued

Tax certificate

- form of, 2207
- loss of, 2207
- purchase by county, 2231
- re-sale of property, 2231
- right of redemption, 2231

Tax deeds

- act, legislative intent, 2233.7
- actions, 2215.2
 - complaint, contents of, 2215.2
 - parties, 2215.2
 - county as plaintiff, 2215.2
- quiet title, 2215.2
 - complaint, 2215.2
 - parties, 2215.2
- pending actions, 2215.2
- procedure, 2215.2
- several tracts of land in one section, 2215.2
- effect of deed, 2215.9
- errors in, validation of, 2214.2
- execution by chairman of board of county commissioners, 2208.1
- lien of taxes, 2215.9
- procurement of, 2182—2235
- reappraisal and sale, 2208.1
- redemption
 - extension of time, 2233.6
 - waiver of penalties, 2233.6
- sale of by county, 2208.1
 - notice, 2208.1
 - publication, 2208.1
 - public auction, 2208.1
 - validation of, 2214.2
 - when issued, 2231

Taxes

- illegally collected, refunded, 2222
- refund, claim for, 2222

Tax sales, 2182—2235

- assessment of property, 2231
- assignment of, 2233.3
 - rights of county, 2207
- book entries of land sold, 2196
- books, public to inspect, 2196
- certificate
 - assigning rights of county in lands acquired at, form of, 2207
 - description in recorded, 2196
 - form of, 2207
 - loss of, 2207
 - sale of, 2196
- county purchaser at, 2207
- duty of treasurer, 2196
- expiration of act, 2208.1d
- lease of lands when not sold, 2208.1
 - terms of leases, 2208.1
- notice
 - contents, 2182
 - publication of, 2182

Tax—Continued

Tax sales—continued

- payment of taxes subsequent to prior tax certificate, 2196
- property bid in by county, 2207
 - assignment of rights of county in, 2207
 - form of certificate of assignment, 2207
- public auction, 2182
- record of, 2196
 - open to public inspection, 2196
 - what must show, 2196
- redemption from, 2210
 - pay subsequent taxes and interest, 2210
- repeals, 2208.1e
- sale of lands held by county under tax deed, 2208.1
 - at public auction, 2208.1
 - contracts for the purchase of, 2208.1a
 - cancellation of, 2208.1a
 - sale after cancellation of contract, 2208.1c
 - reissue on payment of delinquent taxes, 2208.1a
 - procedure for, 2208.1
 - taxation of lands sold, 2208.1
 - terms, 2208.1
 - saving clause of act, 2233.4
- Teachers' retirement benefit exempt from, 1132.13
- Telephone license tax, tax payer's books, 2355.17
- Water conservation lands
 - exempt, 349.38-1
 - unpaid taxes, 349.38-1

Taxation BasisSee **Classification of Property for Taxation****Tax Deed Lands**See **Contracts****Tax Deeds**See **Complaints****Taxes**See **Collection of
County Budget****Taxes, Refund**See **Board of County Commissioners**

Taxi driver's license, 1741.11

Tax LeviesSee **Abandonment of Counties****Tax Lien**See **Coal Mines License Tax****Taxpayers' Complaints**See **Board of Examiners****Tax Sales**See **Taxation**Taylor grazing act, state surplus cash,
allocations, 191.2

Teachers**See Cosmetology and Hairdressing**

Exempt from jury duty, 8893

Powers and duties, 1075

Retirement salary fund, 1113—1132

Teachers, Jury Duty**See Colleges****Teachers Retirement Benefits****See Benefits****Teachers' Retirement Board****See Attorney General****Chairman****Teachers' Retirement Fund****See Contributions****Teachers' Retirement Fund Contributions****See Collection of****Teachers' Retirement System****See Membership of**

Administration by retirement board, 1132.3

Beneficiaries

persons retired under former system, 1132.12

restoration to active service, 1132.6

re-examination, 1132.6

Benefits, 1132.6

disability retirement benefit, 1132.6

exempt from assignment, execution,
garnishment and taxation, 1132.13

optional benefits, 1132.6

retirement under former system, 1132.12

university of Montana teachers, when entitled
to benefits, 1132.6a**Contributions**

by state, 1132.11

collection, 1132.10

deficiency contributions, 1132.8

deductions

by employer, 1132.10

from payroll, 1132.8

teachers deemed to consent, 1132.9

monthly remittances, 1132.10

normal contribution rate, 1132.8

refunding of excess to contributors, 1132.12

Death of member, 1132.6**Definition, 1132.1**

Effective date of act, 1132.18

Former retirement system, discontinuance of, 1132.12

Fraud, protection against, 1132.14

Funds

annuities saving fund, 1132.8

annuity reserve fund, 1132.8

appropriation from general state fund, 1132.8
created, 1132.8

custodian of funds, state treasurer, 1132.7

expense fund, sources, 1132.8

liquor control board receipts,

appropriation, 1132.11

methods of financing, 1132.8

Teachers' Retirement System—Continued**Funds—continued**

management of funds, 1132.7

Montana trust and legacy fund, 1132.7

pension

accumulation fund, 1132.8

reserve fund, 1132.8

transfer of funds, 1132.12

obligation of state, 1132.16

Medical board, 1132.3

Membership, 1132.4

application, 1132.5

board of school trustees to furnish
names, 1132.4

limitation on membership, 1132.15

medical examination, 1132.6

refusal of, 1132.6

Name and date of establishment, 1132.2

Records of employers, 1132.9

Retirement board, 1132.3

actuary, designation, 1132.3

attorney general, member, 1132.3

chairman, 1132.3

definition of, 1132.1

employees, 1132.3

compensation, 1132.3

expenses, 1132.3

legal advisor, 1132.3

membership, 1132.3

oaths, 1132.3

powers, 1132.2

quorum, 1132.3

records, 1132.3

Rules and regulations, retirement board to

provide, 1132.5

secretary bond, 1132.3

state treasurer, member, 1132.3

Superannuation retirement, 1132.6

allowance on, 1132.6

superintendent of public instruction,
member, 1132.3

teachers, appointment on, 1132.3

University of Montana, 1132.4

vacancies, 1132.3

Withdrawal of members, 1132.6

Who may retire, 1132.6

Telegraph Companies**See Taxation (Assessment), 2138—2146**

Telegraph employees, exempt from jury duty, 8893

Telegraph line, easement on state land, 1805.62

Telegraph Lines**See Assessment of****Telephone Companies****See Taxation (Assessment), 2138—2146****Telephone License Tax**

Annual tax on gross income, 2355.10

Bills for service, 2355.10

Telephone License Tax—Continued

- Collections, disposition of, 2355.18
- Gross income, 2355.10
- Interstate business, exclusion of, 2355.11
- Payable quarterly, 2355.10
- Payment, 2355.11
 - delinquency, 2355.13
- Penalties, 2355.13
- Record, 2355.14
- Rules, 2355.12
- State board of equalization, duties of, 2355.16
- Taxpayers' statement, 2355.15
 - failure to file, 2355.16
 - failure to make, 2355.15
 - of gross income, 2355.11
- Tax payers' books, inspection of, 2355.17
- Telephone line, easement on state land, 1805.62
- Telephone messages, tax on, 2355.10

Temperance

See **State Temperance Commission**

Temperance commission fund, creation of, 2815.211

Temperance Commission

See **County Attorney**
State Temperance Commission

Temporary assistance, public welfare, 349A.32

Terms of bonds, insane asylum, 1444c

Term of Office

See **Committeemen**

Terms used in code, definitions, 10713

Theaters

See **Movie Theater Licenses**

Theaters, moving picture, licenses, 2439.1

Threats as evidence, motor vehicle financing act, 10915.23

Timber, forestry school, 877.3

Time for amendments to pleadings, 9192

Time to Plead

See **Answer**

Tire loading, motor vehicles, 1751.4

Title Abstractors

See **Regulation of**

Title, failure of, leasing of state lands, 1805.51-12

Towing a trailer not properly equipped, 1741.7

Town officers, exempt from jury duty, 8893

Towns

See **Bankruptcy**

Cities and Towns

- Investment of sinking funds, 4622.1
- Service of summons on, 9111

Townships

See **Abandonment of Counties**

Tractors, gasoline tax refund, 2396.4

Trade

See **Fair Trade Act**

Trade Commission

See **Montana Trade Commission**

Traffic regulations, 1742.1—1754.6

Trailers

See **Speed and Traffic Regulations**, 1742.1—1754.6

- Equipment, improper, 1741.7

- Height of, 1751.2

- Length of, 1751.2

- Tire loading, 1751.4

- Weight of, 1751.4

- Width of, 1751.2

Training school for feeble-minded persons, establishment, 1474

Transfer of

- Apportionments, high school students, 1262.81

- Funds from specific accounts, public welfare, 349A.82

- Money from public school fund, 1200.4-1

- Title to motor vehicles, 1758.2

Transfers, recording of, 6893

Transportation of narcotics, highway patrolmen to arrest when, 1741.9

Traveling Expenses

- Aid to blind, 349A.64

- Bureau of mines, 884

Treasurer of state agent for public welfare funds, 349A.79

Treasurer, rural electric association, 6396.11

Treasurer's statement, rural rehabilitation

- projects, filing of copies of, 349A.12

Treatment, expenses of, aid to blind, 349A.64

Trial jury defined, 8886

Trials

See **New Trials**

- By court, 9367

- By jury, 9334—9341

- Fixing day of, justice courts, 9637

- In general, 9390

- New trials, 9399—9400

Trucks

See **Speed and Traffic Regulations**, 1742.1—1754.6

- Driver's license, 1741.11

- Gross weight, 1751.4

- Height of, 1751.2

- Length of, 1751.2

- Loads, 1751.4

- Speed regulations, 1742.2

- Tire loading, 1751.4

- Weight of, 1751.4

- Width of, 1751.2

Trustees

See **Board of**
School

Trustees—Continued

- Cemetery associations
 - funds, 6489
 - tenure of office, 6490
- Rural electric association, board of, 6396.9
- Powers and duties, 1015
- School, 1002—1015(24)
- Title to motor vehicle, transfer of, 1758.2

Trustees of Funds

See **Cemetery Associations**

Tuberculosis Sanitarium

See **Bonds**

- Additions to, 1525.1
 - construction, 1525.1
- Bonds
 - amount, 1525.3
- Issuance, authority, 1525.2
 - payment, 1525.3
- Revenue bonds, 1525.2
- Emergency provisions, 1525.4
- Improvements, authorization, construction, 1525.1
- Powers previously conferred confirmed, 1525.5
- Sinking fund, 1525.3

Tuition, junior colleges, 930.16

U

Undertakers, exempt from jury duty, 8893

Unemployment Commission

See **Appeals**

Unemployment Compensation

See **Attorney General**

Attorneys**Commissions****Contributions**

- Administration, 3033.11
 - fund, 3033.13
 - administration, 3033.13
 - composition, 3033.13
 - creation, 3033.13
 - state treasurer's bond, 3033.13

Benefits

- claims for, 3033.6
 - appeal to
 - supreme court, 3033.6
 - bond, 3033.6
 - supersedes, 3033.6
 - tribunal, 3033.6
 - attorney's fees, 3033.6
 - commission's deputy, initial determination, 3033.6
 - duties
 - appeal, 3033.6
 - benefits pending appeal, 3033.6
 - commission's powers on review, 3033.6
 - modification of findings, 3033.6
 - procedure, 3033.6
 - record on, 3033.6

Unemployment Compensation—Continued**Benefits—continued**

- claims for—continued
 - commission's deputy, initial determination—
 - continued
 - duties—continued
 - appeal—continued
 - testimony, 3033.6
 - time for appeal, 3033.6
 - findings sent to commission, 3033.6
 - notice to claimant, 3033.6
 - judicial review, 3033.6
 - reconsideration by deputy, 3033.6
- court review
 - action in district court, 3033.6
 - appeal to the supreme court, 3033.6
 - jurisdiction, 3033.6
 - procedure, 3033.6
 - filing, 3033.6
 - regulations, employer to post, 3033.6
- conditions
 - eligibility
 - registration and report at employment office, 3033.4
 - minimum of earned wages, 3033.4
- disqualification for, 3033.5
 - disability compensation, 3033.5
 - discharge for misconduct, 3033.5
 - dispute caused by employer, 3033.5
 - failure to apply or accept work, 3033.5
- labor dispute, 303.5
 - participation in, 3033.5
 - separate factory, defined, 3033.5
- labor union compulsion, 3033.5
- leaving work, 3033.5
- non-disqualifying payments, 3033.5
- old age pension, 3033.5
- suitability of work, 3033.5
- unfavorable conditions, 3033.5
- wages due on termination of work, 3033.5
 - when benefits not denied, 3033.5
- duration of, 3033.3
- old age benefits, 3033.5
- payment of, 3033.3
- total unemployment, 3033.3
- wage record, 3033.3
- wages, minimum of, 3033.4
- waiting period, 3033.4
- when not denied, 3033.5
- wrongfully received, penalty, 3033.16

Commission, 3033.10

- chairman, 3033.10
- classifying positions, 3033.11
 - appointment, 3033.11
 - examinations, 3033.11
- compensation
 - members, 3033.10
 - officers and employees, 3033.11

Contributions, 3033.7

- collection, 3033.14

Unemployment Compensation—Continued

Contributions—continued

- civil actions, 3033.14
 - employer's assets, priorities under legal dissolutions or distributions of, 3033.14
 - interest past due, 3033.14
- merit rating, study of, 3033.7
- payment, 3033.7
- rate of, 3033.7
- refunds, time and manner of making, 3033.14
- cooperation
 - with railroad retirement board, 3033.12a
 - with social security board, 3033.11

depositions, 3033.11

deputy, 3033.6

divisions, 3033.10

duties and powers of, 3033.11

employer's

- coverage, approval, 3033.8
- work records, 3033.11

information to United States agencies, 3033.11

employment in and out of state, 3033.11

members

- compensation, 3033.10
- political activity, 3033.10
- removal, 3033.10
- term of office of, 3033.10
- vacancies, 3033.10

oaths, 3033.11

organization, 3033.10

personnel, 3033.11

publications, 3033.11

quorum, 3033.10

report

- annual, 3033.11
- as to employees confidential, violation, penalty, 3033.11

rules and regulations, 3033.11

subpoenas, 3033.11

- disobedience, penalty, 3033.11

witnesses, 3033.11

- perjury, 3033.11
- prosecution, 3033.11

- self-incrimination, 3033.11

Definitions, 3033.19

Economic insecurity, 3033.2

Effective date of act, 3033.24

Employer's coverage, 3033.8

- approval by commission, 3033.8
- employing unit defined, 3033.8
- period, election, and termination of, 3033.8

Employment in and out of state, 3033.11

False statements, penalties, 3033.16

Fees of counsel or agent

- approval of commission, 3033.15
- limitation, 3033.15
- violation, penalty, 3033.15

Fund, 3033.9

- administration of, 3033.9

Unemployment Compensation—Continued

Fund—continued

- disbursement if federal act becomes inoperative, 3033.9
- disposition of balance, 3033.9
- establishment and control, 3033.9
- expenditures, 3033.9
- liability of state and commission limited to fund, 3033.18
- state treasurer
 - duties, 3033.9
 - benefit account, 3033.9
 - bond of, 3033.9
 - clearing account, 3033.9
 - deposit and benefit account, 3033.9
 - depository, 3033.9
 - separate accounts, 3033.9
 - withdrawals from trust fund, 3033.9
- transfer to railroad unemployment insurance account, 3033.9a
- warrants, 3033.9

Partial invalidity saving clause of act, 3033.21

Penalties, 3033.16

Police power, enactment under, 3033.2

Public policy as to unemployment, 3033.2

Representation in court

- attorney may be employed by commission, 3033.17
- criminal prosecutions by attorney general, 3033.17

Rights and benefits, protection of

- deductions from wages, penalty, 3033.15
- what agreements void, 3033.15

Saving clause of act, 3033.20

State employment service

- acceptance of act of congress, 3033.12
- agreements, 3033.12
- contributions, acceptance of, 3033.12
- duties, 3033.12
- federal money, disposition of, 3033.12
- offices, 3033.12
- personnel

- appointment of, 3033.12

- director, 3033.12

State not liable in excess of fund, 3033.18

Termination of act

- if federal act declared invalid, 3033.22
- if not approved by federal social security board, 3033.23

Title of act, 3033.1

Violations of act

- attorney general to prosecute criminal violations, 3033.17
- penalties, 3033.16

Witnesses, 3033.11

Unemployment ReliefSee **Emergency Relief Employment,**

335.17-1—335.17-7

Unfair CompetitionSee **Fair Trade Act,** 7590.6

Unfair Practices**See Contracts****Cooperative Associations**

Administration of act, 10915.12

Agricultural products, 10915.5a

Attorney general

nature of proceedings, 10915.8

when to act, 10915.8

Closing-out sales

application of act, 10915.6

Competition, distribution of, 10915.1

Competitor, meeting price of, 10915.6

Contracts, when illegal, 10915.9

Cooperative associations, 10915.7

Cost price

determination

forced or close-out sale, 10915.4

Cost survey, 10915.5

Damages, 10915.10

Discount, when unfair, 10915.7

Discriminations in price, 10915.1

Immunity from act, 10915.10

Injunction, 10915.5

who may enjoin, 10915.10

Intent

allegations and proof of, 10915.5

unlawful, 10915.2

Invoices, falsification of, 10915.12c

Milk, 2640.1

Officer's sale, 10915.6

Penalties, 10915.11

Perishable or damaged goods, 10915.6

Persons responsible, 10915.2

Rebates, when unfair, 10915.7

Records, 10915.10

Refunds, when unfair, 10915.7

Short title, 10915.15

Violations, 10915.3, 10915.10

Witnesses, defendant as, 10915.10

Uniform Accident Reporting Act**See Accidents****Motor Vehicles****Uniform Act for Out-of-State Parolee****Supervision, 12266.1, 12266.2**

Citation of act, 12266.1

Compacts between states

authorized, 12266.1

ratification, 12266.1

renunciation, 12266.1

Parolee resident in another state, 12266.1

employment, 12266.1

investigations, 12266.1

retaking probationer, 12266.1

extradition waived, 12266.1

visitation and supervision, 12266.1

Rules and regulations, 12266.1

Uniform Act on Close Pursuit, 11772.1—11772.6**Arrest**

by officer from another state, 11772.1

authority, 11772.1

duty of judge, 11772.2

hearing before judge of court of

record, 11772.2

legality of, 11772.2

Certification of act to other states, 11772.5

Construction of act, 11772.3

District of Columbia, "state" includes, 11772.4

Short title, 11772.6

Uniform Aeronautics Act

Frightening livestock, 2736.7

Landings, 2736.7

Lawfulness of flight, 2736.7

Recovery of damages, 2736.7

Uniform business records as evidence

act, 10598.1—10598.4

Uniform Drug Act

Acts prohibited, 3202.15

Apothecaries, sales by, 3202.19

to physicians, dentists, or veterinarians, 3202.19

written prescriptions, 3202.19

refilling, 3202.19

Arrest

duty of peace officers, 3202.27

Common carriers exempted from act, 3202.30

Common nuisances, 3202.31

Constitutionality of act, 3202.40

Conviction

effect of, under federal laws, 3202.39

licensed revoked, 3202.33

reinstatement, 3202.33

notice sent licensing board, 3202.33

Definitions, 3202.14

Enforcement of act, cooperation, 3202.37

Exemptions, 3202.21

False or forged label, affixing to package, 3202.35

Federal officials' right to inspect records and

stocks of drugs, 3202.34

Fines and costs, etc.

collection of, 3202.29

defendant jailed until paid, 3202.29

lien on real estate, 3202.29

on leased premises, 3202.29

Forged prescription or order for drugs,

uttering, 3202.35

Fraud or deceit in obtaining narcotic drugs, 3202.35

Inspection

Inspection, federal and state officials, 3202.34

Interpretation of act, 3202.41

Labels, 3202.23

affixing false or forged to package, 3202.35

alteration or removal of, 3202.23

apothecary must affix, 3202.23

manufacturer must affix, 3202.23

removal of, 3202.23

Uniform Drug Act—Continued

Licenses

- qualifications for, 3202.17
- revoked on conviction of violation, 3202.33
- reinstatement, 3202.33
- manufacturers operating without license, unlawful, 3202.16
- wholesalers doing business without license unlawful, 3202.16

Name of act, 3202.43

Penalties for violations, 3202.38

Persons and corporations exempt from provisions of act, 3202.30

Physician

- false statements to obtain prescription or drugs, 3202.35
- not privileged communications, 3202.35
- Pleadings need not negative exceptions, etc., 3202.36

Possession by certain persons

- authorized, 3202.24
- lawful, when, 3202.18
- when not unlawful, 3202.30
- wholesalers, 3202.30

Preparations exempted, 3202.21

- conditions of exemption, 3202.21
- construction of section, 3202.21
- liniments for external use, 3202.21
- quantities limited, 3202.21

Professional use of narcotic drugs, 3202.20

- by physicians, dentists or veterinarians, 3202.20

Prosecutions

- burden of proof, 3202.36
- effect of conviction under federal laws, 3202.39
- negating exception, excuse, or exemption, 3202.36

Records and stocks of drugs

- inspection by, 3202.34
- knowledge gained confidential, 3202.34

Records to be kept, 3202.22

- form of, 3202.22
- manufacturers, 3202.22
- physicians, dentists, etc., 3202.22
- preservation of, 3202.22
- when not required, 3202.22
- wholesalers, 3202.22

Repeals, 3202.42

Sale by manufacturers and wholesalers, 3202.18

- on official written orders, 3202.18
- duplicate orders, preservation, 3202.18
- special orders, 3202.18
- to apothecaries, 3202.18
- to foreigners, 3202.18
- to government employees, 3202.18
- to masters of ships and aircraft, 3202.18

Search warrant, 3202.25

- complaint under oath, 3202.26
- forfeiture of drugs seized, 3202.26
- hearing of return, 3202.26
- evidence, 3202.26
- issuance and execution of, 3202.25

Uniform Drug Act—Continued

Search warrant—continued

- judgment not bar to other prosecution, 3202.26
- private dwellings, warrant to issue for, 3202.25
- return, 3202.26
- judgment, 3202.26
- seizure of narcotic drugs, 3202.25
- service of warrant, 3202.25

Seized narcotic drugs

- disposition of, 3202.32
- forfeited and destroyed, 3202.32
- secretary of state board of health may request, 3202.32
- delivery to hospitals, 3202.32
- record of receipts and disposition, 3202.32
- Seizure of narcotic drugs by peace officer, 3202.27
- replevin to recover forbidden, 3202.28
- warrant issued to hold, 3202.27
- Violations, penalties, 3202.38

Uniform judicial notice of foreign law act, 10532.7

Uniform official report as evidence act, 10576.1—10576.5

Uniform System of Public Schools, 1200.4

- Common school equalization fund, 1200.4
- moneys transferred from, 1200.4-2
- State general fund created, 1200.4
- Transfer of money from public school fund, 1200.4-1

United States

- As mortgagee, 9444.11
- Forest service officers, fire wardens ex-officio, 1840.25
- History, course of study, 1054
- Milk control board to cooperate with, 2640.21
- Minerals, to, conveyance, 1805.65-1
- Money received from for public welfare purposes, 349A.79
- Rural rehabilitation projects
- loans to, 349B.2
- presentation of bill to, 349B.10
- State board of forestry, cooperation with, 1840.5
- State board of public welfare, to make contracts with, 349A.14

University of Montana

- President of, member of science commission, 1575.3

- University teachers, exempt from jury duty, 8893
- Unknown parties as defendants, 9488.1

Unlawful PracticesSee **Corporations**

- Unlawful practices, sales at less than cost, 10915.2
- Unsafe condition of motor vehicles in driving, 1741.7

UtilitiesSee **Public Utilities**

Utilities, Public
 See **Regulation of**

V

Validity
 See **Bonds**

Validity of Bonds, 5668.13a—5668.13h
 Act applies to all bonds prior or
 subsequent, 5668.13e
 Action to test validity, time to bring, 5668.13c
 Attorney general
 duties of, 5668.13b
 determination by, 5668.13a—5668.13h
 submission of proceedings to, 5668.13a
 Bonds and proceedings validated, 5668.13h
 Definitions, 5668.13g
 Effective date of act, 5668.13e
 Partial invalidity saving clause, 5668.13d
 Pending actions not affected by act, 5668.13h
 Short title of act, 5668.13f

Validation of sale, unredeemed property, 2235
 Value, definition of, 1996

Vehicles

Damage to, 1754.30
 Montana beer act, definition of, 2815.11
 Throwing lighted cigarette from, forest
 areas, 1840.17
 Used in the transportation of pupils, 1186.3
 qualification of school bus drivers, 1186.3

Vendor, definition of, 10915.6

Veterans' Memorial Fund Commission, 4562.4—4562.8

Claims of veterans, 4562.8
 approval by commission, 4562.8
 warrants in payment of, 4562.8

Commission

appointment, 4562.4
 compensation, 4562.4
 creation of, 4562.4
 duties and powers, 4562.6
 fund

 control of, 4562.5
 expenditures, 4562.5

members, 4562.4
 quorum, 4562.4
 terms of office, 4562.4
 organization, 4562.4
 powers, 4562.5
 rules and regulations, 4562.7

Memorial building, 4562.6

construction, 4562.6
 control and management, rules and
 regulations for, 4562.7
 donations, 4562.6

Vice president, rural electric associations, 6396.11

Violation of Motor Vehicle Act, 1754.18, 1754.22
 Speed limit zones, 1742.3
 Stopping at main highways, 1741.7
 Use of dealer's license plates, 1759.4

Vocational

Adjustment of blind persons, 349A.57
 Education, state board of, 1262.99a
 Rehabilitation bureau, 349A.71
 Training centers
 adults, 1262.99f
 branches of training, 1262.99b
 high schools, 1262.99a
 materials and equipment, 1262.99g
 tuition fees, 1262.99f

Vocational Education

See **Commission for the Blind**
 State Board of Vocational Education

Vocational School for Girls

See **State Vocational School for Girls**

Vocational Training Centers

See **Attendance**

Voters

See **Challenge**

Voting at meetings, rural electric associations, 6396.8
 Voting districts, rural electric associations, 6396.10

W

Wages of Mine and Metal Workers—

Security for Payment

Application of chapter 264, political code, 3094.1
 Attorney's fees allowed in suit to enforce, 3094.11
 Failure to pay wages, 3094.11
 suit filed in fifteen days, 3094.11
 attorney's fees, 3094.11
 costs, 3094.11

Operator's statement, 3094.2

contents, 3094.2
 filing, 3094.2
 failure to file, penalty, 3094.3
 with commissioner of labor and county
 clerk, 3094.2

Persons to whom act applicable, 3094.1

Remedies cumulative, 3094.13

Surety bond for, 3094.6
 failure to furnish, 3094.9
 notice to furnish
 publication of, 3094.10
 when not required, 3094.6

Violations of act, 3094.4

commissioner's report to county attorney, 3094.4
 county attorney to prosecute, 3094.4
 district court proceedings, 3094.5
 costs, 3094.8
 further operations
 duty of county attorney, 3094.8
 injunction, 3094.8
 contempt of court, 3094.9

**Wages of Mine and Metal Workers—
Security for Payment—Continued**

- Violation of act—continued
 - district court proceedings—continued
 - hearing and decree, 3094.6
 - process, service of, 3094.7
 - restraining order, 3094.6
 - review by supreme court, 3094.12

War defense bonds, cancellation, 5624

Wardens

See **Game Wardens**

Warning on passing motor vehicles, 1741.7

War Orphans

See **World War Orphans' Education Fund**

Warrant

- Of apprehension, insane persons, 1431
- Of arrest, 11737
 - arrest by telegraph, 11737
 - directed to what peace officers, 11737
 - executed in another county, when and how, 11737
- Rural rehabilitation projects, drawn on county treasurer, 349B.12
- To hold seized narcotic drugs, 3202.27
- Where county funds insufficient, 349A.46d

Warrant Districts

See **Abandonment of Counties**

Warrants

See **County Finances, Bonds, and Warrants**

Water

See **Cemetery Associations**

Commissioners

- appointment, 7136
- compensation, 7136
- duties of, 7136
- stored waters, distribution of, 7136
- water distribution, 7136

Conservation

- board, 349.29-1—349.38-1
- lands
 - acquisition, 349.38-1
 - taxation, exemption from, 349.38-1
 - tax sales, 349.38-1
- state forest experimental station, 877.3

Rights

- adjudication, 7135.2
- costs paid by state board, 7135.5
- errors, correction of, 7189.1
- examination of streams, 7135.5
- hearings, 7135.6
- jurisdiction of court, 7189.1
- judgment, 7135.9
- orders and decrees, modification, 7189.1
 - hearing, 7189.1
 - notice, 7189.1
 - petition, 7189.1
- procedure in district court, 7135.8

Water—Continued

Rights—continued

- adjudication—continued
 - recognition of decreed water rights, 7135.7
 - referees, 7135.6
 - reports, 7135.7
 - state engineer
 - duties of, 7135.5
 - filing reports, 7135.5
- appropriation, 7097.1—7135.9
- diversion of water, 7097.1
- intersection of irrigation works, crossing, 7196.1
- interstate compacts, negotiation of, 7135.1
- interstate streams, 7135.1
- policy, 7135.1
- referees
 - appointment of, 7135.3
 - court to appoint, 7135.3
 - notice, 7135.4
 - objection, 7135.4

Users'

- association formed under state law, 7165.1, 7165.2
- corporation under Montana law, 7165.1, 7165.2
- articles of incorporation, 7165.2
 - amendment, 7165.2
- existence, continual, 7165.1

Water Appropriation

See **Carey Land Act Board**

Water Conservation

See **State Water Conservation Board**

Water Rights

See **Carey Land Act Board**

Water Users

See **Corporations**

Weeds

See **Noxious Weeds**

Weighing vehicles, patrolmen authorized, 1751.5

Weight of motor vehicles, 1751.4

Weights and Measures, Standard—State Sealer

- Adjusting and sealing, 4241
- apothecaries' weights and measures, 4249
- dealers to cause once a year, 4241
- false sealing by authorized persons,
 - penalty, 4248
- Arrests, 4263
 - sealer and deputies may make, 4263
- Berry containers or hallocks, size of, 4246
- Confiscation, when, 4251
 - damages for seizure not allowed, 4251
- Container defined, 4246
- False selling a misdemeanor, 4258
- False weights and measures, use of, penalty, 4256
- Fines, collection and disposal of, 4264
- Family scales, 4251
- Hallocks or berry containers, size of, 4246

Weights and Measures, Standard—**State Sealer—Continued****Inspection**

- certificate of delivered to owner or person in charge, 4238
- forms and contents of, 4238

Methods of calculating, 4246**Milk, 4254**

- containers, capacity permanently marked thereon, 4255
- short measure, container tested, 4254
 - certificate of, use in court proceeding, 4254
 - sold by standard wine measure, 4254

Net weight, sales must be by true, 4246**Offenses enumerated, 4246****Packages**

- labels, 4246
- tested for weights, 4244

Peddlers using scales or measures, duty, 4253**Repeals, 4246.2****Scales and measures**

- not readily adjustable, 4250
 - notice forbidding use, 4250
 - removal of, unlawful, 4250
- which cannot be made to conform, 4251
 - stamped "condemned," 4251

Sealer of weights and measures, 4235

- authority to act, 4237
 - arrests, 4263
 - computing devices, 4243
 - deputies, 4235
 - certificate of inspection, 4238
 - duties, 4238
 - rules and regulations for deputies, 4261
 - force and effect, 4261
 - sealer may make, 4261
 - duties, 4236
 - inspection of commodities offered for sale in packages, 4244
 - obstructing is a misdemeanor, 4260
 - powers and duties, 4236
 - police power, 4244
 - deputy sheriffs ex-officio, 4263
 - prosecution of persons giving short weight, 4244
 - records, 4247
 - reports, 4247
 - sealing, 4241
 - testing, 4243
 - refusal to exhibit articles for, 4246
 - weighing and measuring devices kept for sale, 4243
- Seizure of weights and measures as evidence, 4252**
- return or forfeiture of, 4252
- Short weights, prosecution, 4244**
- Track scales, 4245**
- condemnation, 4245
 - short weighing or measuring, wilful, 4245
 - penalty, 4245
- Use of weights and measures before testing, 4240**
- penalty, 4240

Weights and Measures, Standard—**State Sealer—Continued**

- Violations of act, penalty, 4264.1
- Weights to have denomination marked in plain figures, 4249
- weights duly stamped legal throughout state, 4257
 - not necessary to be resealed, 4257

Welfare**See Public Welfare****Fund, 349A.79****Services, children, public welfare act, 349A.74****Welfare Board****See County Commissioners****Welfare Department****See County Welfare Department****Welfare Services****See Child Welfare Services****Wheels, tire requirements, 1751.4****White rot eggs, definition of, 2634.6****Wholesaler**

- Definition of, fair trade act, 7590.1
- License, produce, 2443.3
- Montana beer act, definition of, 2815.11

Wholesalers**See Produce Wholesaler****Wholesale stores, license, 2428.7****Width of motor vehicles, 1751.2****Wild animals, predatory, bounty for killing, 3417.17****Wild game range, provision for, 7364.29-30****Will, foreign, recording of, 10039****Winding up of affairs, rural electric associations, 6396.18****Witnesses**

- Attendance from without the state, 12186.1—12186.6
 - Investigation of applications for relief, 349A.40
 - Montana trade commission, 10915.12b
 - Persons who cannot serve as, 10535
 - Unemployment compensation, 3033.11

Witnesses from Without State, Attendance

- Definitions, 12186.1
- Interpretation of act, uniformity of, 12186.5
- Short title of act, 12186.6
- Summons, disobedience, penalty, 12186.2
- Witness from another state, 12186.3
 - certificate issued by judge, 12186.3
 - exemption from arrest and service of process, 12186.4
 - failure to appear and testify, punishment, 12186.3
 - fees and mileage, 12186.3
 - taken into custody, when, 12186.3
- Witness in this state summoned to another, 12186.2
 - exempt from services of process or arrest in state requesting, 12186.2

Witnesses from Without State, Attendance—Cont.

- Witness in this state summoned in another—cont.
 - failure to appear, penalty, 12186.2
 - fees and mileage, 12186.2
 - hearing before judge of court of record, 12186.2
 - matters considered by judge, 12186.2
 - procedure, 12186.2
 - taken into custody, when, 12186.3

Witnesses Out of State

See **Criminal Law**

Wool Growers' Association

See **Montana Wool Growers' Association**

Workman's Compensation Act

- Claims, limitation period, exceptions, 2900
- Compensation to various persons, 2891
- Costs and disbursements, apportionment, 2945
- Hazardous industries, employers engaged in, 2841
- Income tax, 2295.7
- Legal advisor of board
 - attorney general, 2835
 - other counsel, employment, compensation,
 - source, 2835
- Occupational disease reports admissible on
 - hearings, 2484.7
- Orders and awards, amendments, jurisdiction, 2952
- Proceedings
 - attorney's fees, 2953
 - records, 2953

World War Orphans' Education Fund,

- 5668a-1—5668a-3
- Board of education
 - duties, 5668a-2
 - eligibility, determination, 5668a-2
- Fund
 - allotments, 5668a-3
 - limitations, 5668a-3
 - appropriation for, 5668a-1
 - benefits, 5668a-2
 - application for, 5668a-2
 - eligibility, 5668a-2
 - creation of, 5668a-1
 - payments from, 5668a-1

Wrecker car without flags or flares, 1741.7

Writ of mandate, 9848

Writ of prohibition, 9861

Written report of accidents, 1754.35

Wyoming

- Cooperation with in water right matters, 1956.2
- Reciprocal legislation, 1956.2

Y

Yellowstone river project, 349.29-2

Z

Zones, speed limit, 1742.3

State Law Library Of Montana

KFM9030 1935 .A2 Supp

1939 supplement to the 1935 Montana revi

c. 1



3 0000 00064 1989

